

**EXHIBIT 5**

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

STEVEN NEWMAN,

Plaintiff,

-vs-

CIVIL ACTION NO. 02-135 (

KSH)

GENERAL MOTORS CORPORATION,

Defendant.

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The Videotaped Deposition of THOMAS A. ZIOLKOWSKI

Taken at 400 Renaissance Center

23rd Floor

Detroit, Michigan

Commencing at 9:34 a.m.

Tuesday, September 16, 2008

Before Anne H. Chilton, RMR, RPR, CSR-3669

2 (Pages 2 to 5)

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<p>1 APPEARANCES OF COUNSEL: 2 MAURICE J. DONOVAN, ESQUIRE 3 Benjamin M. Del Vento, P.C. 4 70 South Orange Avenue 5 Livingston, New Jersey 07039 6 (973) 758-1801 7 Appearing on behalf of the Plaintiff. 8 9 JAMES K. VINES, ESQUIRE 10 JAMESON B. CARROLL, ESQUIRE 11 MICHAEL WEISS, ESQUIRE 12 King &amp; Spalding, LLP 13 1180 Peachtree Street, N.E. 14 Atlanta, Georgia 30309-3521 15 (404) 572-4600 16 -and- 17 RONALD C. PORTER, ESQUIRE 18 General Motors Legal Staff 19 MC 482-02-205 20 PO Box 400 21 Detroit, Michigan 48265 22 (313) 665-7421 23 Appearing on behalf of the Defendant. 24 ALSO PRESENT: 25 MARC MYERS, VIDEOGRAPHER</p>	<p>1 MR. DONOVAN: Just for the record, 2 because we're videotaping the deposition, General 3 Motors' four counsel are sitting to the witness's 4 right, the court reporter and myself on behalf of the 5 plaintiff are sitting to the witness's left. 6 Is that correct, Mr. Ziolkowski? 7 THE WITNESS: That's correct. 8 MR. DONOVAN: Okay. It's 9 Ziolkowski? 10 THE WITNESS: Correct. 11 MR. DONOVAN: Okay. 12 EXAMINATION BY MR. DONOVAN: 13 Q. Mr. Ziolkowski, my name is Maurice Donovan. 14 I'm an attorney. I represent Mr. Newman, the executor 15 of the estate of Michael Green. I know you're familiar 16 with Michael Green. Michael Green passed away and 17 Steven Newman is now the executor of his estate. 18 We're here today for the purpose of 19 taking a deposition, or that's what it's called in New 20 Jersey, I know they're called different things in 21 different jurisdictions, but basically it's a question 22 and answer session which I and maybe some of the other 23 attorneys are going to ask you some questions and 24 hopefully you're going to give us the answers to those 25 questions.</p>
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<p>1 Detroit, Michigan 2 September 16, 2008 3 About 9:34 a.m. 4 VIDEOGRAPHER: We are on the record. 5 This is the videotaped deposition of 6 Thomas Ziolkowski being taken in Detroit, Michigan. 7 Today is Tuesday, September 16th, 8 2008. The time is now 9:34 and 14 seconds a.m. 9 And can the attorneys please state 10 their appearances for the record and the court reporter 11 please swear in the witness. 12 MR. DONOVAN: Good morning. Maurice 13 J. Donovan of the law office of Benjamin M. Del Vento 14 appearing on behalf of the plaintiff, Steven Newman, 15 executor under the will of Michael Green. 16 MR. VINES: I'm Jim Vines appearing 17 on behalf of the defendant, General Motors. 18 MR. WEISS: I'm Michael Weiss also 19 on behalf of General Motors. 20 MR. CARROLL: Jamie Carroll for GM. 21 MR. PORTER: Ronald Porter, General 22 Motors Legal Staff. 23 THOMAS A. ZIOLKOWSKI, 24 having first been duly sworn, was examined and 25 testified on his oath as follows:</p>	<p>1 Have you ever been deposed before? 2 A. Yes. 3 Q. On how many occasions before today, 4 approximately? 5 A. Approximately twice. 6 Q. Twice. Okay. Is that in a representational 7 capacity for General Motors or in some personal 8 business? 9 A. Representative capacity for General Motors. 10 Q. Okay. And has that been relatively recently 11 that you were deposed? 12 A. Three or four years ago. 13 Q. Okay. The reason why I ask that is there's 14 a bunch of rules we can rattle through. I know you're 15 an attorney, so I assume you're generally familiar with 16 the proceedings, so I will just highlight them unless 17 you want me to go through the whole gamut of them. 18 A. Yes, please. 19 Q. Okay. This is a sworn proceeding. You have 20 been sworn to tell the truth, so all your answers to 21 these questions should be the truth. Even though we're 22 sitting in a law office, this proceeding has the same 23 solemnity as if you were testifying before a court and 24 a jury. Do you understand that? 25 A. Yes.</p>

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1 Q. Do you promise to tell me the truth to all  
2 the questions I ask you?

3 A. Yes.

4 Q. Okay. If you don't understand my question,  
5 you have to tell me that. It'll be assumed if you  
6 answer the question, that you understood it. The time  
7 to tell me you don't understand my question is after  
8 the question is asked because once you say something,  
9 the court reporter and, of course, the video will take  
10 that down and we can't go back and erase that. So if  
11 you have any questions, I speak too quickly, you don't  
12 understand my language, you lose your train of thought  
13 or the question is unintelligible, which I do many  
14 times, you've got to let me know and then we'll do  
15 whatever we have to do to correct that. Do you  
16 understand the instruction?

17 A. Yes.

18 Q. Do you promise to tell me if you don't  
19 understand my question?

20 A. Yes.

21 Q. Okay. You have to answer verbally because  
22 court reporters take down verbal utterances. You can't  
23 nod your head or gesture. Even though the video will  
24 pick it up, there still will be a transcript of this  
25 proceeding and we need to have words on the

1 A. Yes.

2 Q. Okay. Any questions of me before we begin?

3 A. No.

4 Q. Okay. I'm going to go through this rather  
5 quickly because you gave testimony at a privilege  
6 hearing or an order to show cause back in New Jersey a  
7 few years ago and there's transcripts of that, so I  
8 just want to get on the record some of the background  
9 and some of this information that is in that record.  
10 If any of this is incorrect, stop me and, you know,  
11 give me the correct information. Okay?

12 A. Yes.

13 Q. Okay. You graduated from Northwestern  
14 University in 1969?

15 A. Correct.

16 Q. And then you went to the Detroit College of  
17 Law?

18 A. Correct.

19 Q. And you graduated there in February of 1974.

20 A. It's either '73 or '74, but...

21 Q. Okay.

22 A. Yeah, it's close enough, I think.

23 Q. Okay. Did you go there nights?

24 A. I started in night school.

25 Q. Okay.

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1 transcripts, not uh-huhs or uh-uhs or pointing or  
2 gestures. Do you understand that?

3 A. Yes.

4 Q. Okay. The attorneys who are seated to your  
5 right, if any of them makes an objection to the  
6 question I ask, please discontinue your answer if you  
7 have started it and allow them to put their objection  
8 on the record, let us discuss it, and then you'll  
9 probably be given further instructions on what to do  
10 with that question. Understood that?

11 A. Yes.

12 Q. Okay. We're here to get information which  
13 you know. You know, they used to say the facts and  
14 nothing but the facts. If you don't know the answer to  
15 my question, it's perfectly acceptable to say "I don't  
16 know" or "I don't remember", however, if you can give  
17 me a reasonable approximation or a reasonable estimate  
18 which is not just an outright guess, you can do that,  
19 just let me know you are approximating, and if you're  
20 guessing, let us know that, too, and we'll probably  
21 move on to something else. I'm really only interested  
22 in what you know, not any assumptions you might make or  
23 any hypothesis you make might based upon any other  
24 individual considerations other than what you know. Do  
25 you understand that?

1 A. Finished in day school.

2 Q. All right. How many years did you go nights  
3 and how many years did you go day?

4 A. I went one semester nights and the rest day  
5 school.

6 Q. Okay. And at some point in time after  
7 getting -- was it a juris doctor degree?

8 A. Yes.

9 Q. You took the Michigan bar?

10 A. Yes.

11 Q. What year was that?

12 A. It was '7 -- I thought it was '73 right  
13 after I graduated, but maybe it was '74. I can't  
14 remember.

15 Q. So '73, '74?

16 A. Yes.

17 Q. Okay. Is that the only bar admission you  
18 applied to?

19 A. Correct.

20 Q. Is that the only bar admission you hold?

21 A. Correct.

22 Q. Okay. And you continue to hold that?

23 A. Yes.

24 Q. And it's in good standing?

25 A. Yes.

4 (Pages 10 to 13)

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<p>1 Q. All right. After you passed the bar you 2 went to work for the Wayne County Prosecutor's Office? 3 A. Correct. 4 Q. And you were a trial attorney there for nine 5 years? 6 A. Correct. 7 Q. And then you went to the U.S. -- 8 A. Excuse me. I also worked in the appellate 9 section for a while. 10 Q. For the prosecutor's office? 11 A. Yes. 12 Q. Was that doing legal research and writing 13 briefs? 14 A. Correct. 15 Q. And is that encompassed in the nine years? 16 A. Yes. 17 Q. All right. So you were either a trial 18 attorney or an appellate attorney for the nine years 19 you were at the Wayne County Prosecutor's Office? 20 A. Correct. 21 Q. All right. Then you went to the U.S. 22 Attorney's Office for the Eastern District of Michigan? 23 A. Correct. 24 Q. All right. And that was the substance abuse 25 unit?</p>	<p>1 Q. All right. Anything else? 2 A. That's it. 3 Q. Okay. You currently work for General 4 Motors? 5 A. Correct. 6 Q. Okay. So you've been here what, about 19 7 years? 8 A. Nineteen years. 9 Q. Almost 20 years? 10 A. Nineteen. 11 Q. Okay. Now, when you came in here, were you 12 assigned to any particular department within the legal 13 system of General Motors? 14 A. The products liability group. 15 Q. Okay. And what is the products liability 16 group? 17 A. Made up of lawyers, legal assistants working 18 defending General Motors in personal injury product 19 liability work. 20 Q. Okay. And did you have any -- 21 That's a civil -- 22 A. Correct. 23 Q. -- function. Okay. 24 Your previous history was, if not 25 all, certainly substantially in the criminal end.</p>
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<p>1 A. Control substance abuse. Yes. Right. 2 Q. All right. And you were there for six 3 years? 4 A. Correct. 5 Q. And was that all trial work? 6 A. Correct. 7 Q. And if I understand correctly, you left 8 there sometime in August of 1989 and went to work for 9 General Motors? 10 A. That's correct. 11 Q. All right. Any other career history which I 12 haven't covered? 13 A. Legal or non-legal? 14 Q. Well, I'm not interested in summer jobs you 15 had as a kid. 16 A. How about teaching job? 17 Q. Okay. 18 A. Okay. After I graduated in '69, the first 19 year I was a school teacher. 20 Q. Oh. What grade? 21 A. High school. 22 Q. What subject? 23 A. History, social studies type of stuff. 24 Q. Okay. How long did you do that for? 25 A. One year.</p>	<p>1 A. Correct. 2 Q. All right. Other than when you first came 3 to General Motors, did you have any other background or 4 experience in handling civil cases? 5 A. No. 6 Q. Okay. So you didn't do any of that in the 7 attorney general's office? 8 A. No. 9 Q. Okay. And -- so they put you to work in the 10 products liability group. Did they assign you to an 11 attorney? Did they give you a caseload right away? 12 How do they work that here at GM or how did they work 13 that back in 1989? 14 A. If I remember correctly, they gave me a 15 caseload when I first joined the office. That would 16 have been in August of 1989. I was -- 17 I'm sorry. What was your other part 18 of that question? 19 Q. I don't know if there was another part of 20 the question. 21 A. Okay. Yes. 22 Q. Why don't we move on to another one. 23 A. The answer is, yes, I got a caseload. 24 Q. Okay. And about how many cases did they 25 give you when you first got here?</p>

1 A. I would say probably about 100.

2 Q. Okay. That's a nice thing to walk into.

3 A. Well...

4 Q. And were those all automobile crashworthy,  
5 personal injury type cases?

6 A. Correct.

7 Q. All right. So it wasn't any subrogations or  
8 anything of that, it was all --

9 A. Well, I can't remember if there were, but,  
10 you know, there have been a lot of suit matters. I  
11 don't think I had any subrogation claims.

12 Q. I'm saying anything other than that.

13 A. Right.

14 Q. Small claims, warranty cases, you know,  
15 stuff like that.

16 A. I think at that time we -- I may have  
17 handled some breach of warranty cases.

18 Q. But certainly predominantly personal injury.

19 A. Predominantly personal injury.

20 Q. Okay.

21 A. Correct.

22 Q. Was there any kind of a training course or  
23 seminars or did they give you some handouts or, you  
24 know, how did they bring you up to speed other than  
25 saying here's 100 cases, good luck?

1 Traffic Safety Institute? Was it --

2 A. No. It was --

3 You know, I'm not sure. I can't  
4 remember.

5 Q. Okay. Were they over at Northwestern?

6 A. No. No. They weren't accident  
7 reconstruction courses or anything like that.

8 Q. Okay.

9 A. They were general crashworthiness type  
10 cases.

11 Q. I'm sorry. They were not given by GM, it  
12 was somebody other than GM, a third party, so to speak?

13 A. Third party, correct.

14 Q. All right. One of the things in my question  
15 which you didn't address was whether you were given any  
16 type of manuals or handouts or form books or anything  
17 like that to help you along with your --

18 A. Yeah, I was. Yes.

19 Q. Okay. What exactly were you given?

20 A. Manuals.

21 Q. Okay. What kind of manuals?

22 A. Just procedure and practice at General  
23 Motors. Kind of rules to live by.

24 Q. Okay. Did those manuals have to do with the  
25 handling of the personal injury cases or -- I mean, I

1 A. Yes, they did all of the above, everything  
2 you mentioned. There was training in-house. I worked  
3 with other lawyers on staff that would assist me and  
4 answer my questions. My supervisor was always  
5 available to answer my questions. I had some training  
6 outside the office, two -- I think at least two  
7 seminars dealing with crashworthiness, I believe it was  
8 two, and it was kind of continuous education. Some of  
9 the law firms around town had training seminars on  
10 specific issues.

11 Q. Anything else you can think of?

12 A. No, not at this time.

13 Q. Okay. Let's talk about the training  
14 in-house. Was that basically working with another  
15 attorney here or was it more formal, let's go into a  
16 conference room and sit down and let's lecture or give  
17 you other materials?

18 A. It was more informal.

19 Q. Okay.

20 A. Working with other attorneys, getting their  
21 advice, asking questions.

22 Q. The outside seminars you took, under whose  
23 auspices was that?

24 A. What do you mean by that?

25 Q. Who gave the courses? Was it the National

1 don't want to know whether you have your -- you know, I  
2 don't want your health and benefits manual or anything  
3 like that.

4 A. No. They were product liability, legal  
5 staff specific materials about issues about handling  
6 cases.

7 Q. Okay. Was it -- did it provide direction  
8 and guidance on like a step-by-step basis about what to  
9 do with the case?

10 A. I don't remember.

11 Q. Okay.

12 A. No, I don't think it was that -- I don't  
13 think it was that, I mean, step --

14 Like a cookbook type of approach?

15 Q. Yeah. Recipe type.

16 A. No, I don't think it was that specific.

17 Q. Do you remember -- I mean, was it --  
18 obviously it was more general, but in what sense?

19 A. Just in a sense of working with outside  
20 counsel, responsibility, things that we were to do and  
21 not -- you know, I mean, issues that -- that was  
22 expect -- you know, work that was expected of us, how  
23 we were to go about investigating cases, handling those  
24 matters, discovery, what the expectations were from --  
25 that we had for outside counsel.

6 (Pages 18 to 21)

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<p>1 Q. Okay. In the section on discovery was that</p> <p>2 one of the sections in --</p> <p>3 A. I think it was just a proced- -- a process</p> <p>4 of how discovery was -- how we were going to be</p> <p>5 notified about discovery questions, where it came from,</p> <p>6 who initiated the discovery as far as the notification</p> <p>7 that discovery was served on General Motors, how that</p> <p>8 process was going to be handled.</p> <p>9 Q. Okay. Do you still maintain any of those</p> <p>10 manuals or materials?</p> <p>11 A. No. They're obsolete.</p> <p>12 Q. Okay. Was there anything contained in there</p> <p>13 about how you would go about searching for documents</p> <p>14 responsive to discovery requests?</p> <p>15 A. I don't believe so.</p> <p>16 Q. Okay.</p> <p>17 A. That was other training I received as far as</p> <p>18 the process of discovery, answering discovery,</p> <p>19 obtaining documents.</p> <p>20 Q. Okay. Now, was that part of the on job</p> <p>21 training that you spoke about earlier?</p> <p>22 A. That's correct.</p> <p>23 Q. Rather than there being any materials or</p> <p>24 something that was given to you?</p> <p>25 A. Right. Right.</p>	<p>1 say, ah-ha, Cadillac roof documents are, search here</p> <p>2 or --</p> <p>3 A. It's not that -- it's never that --</p> <p>4 Q. -- a flow sheet?</p> <p>5 A. Never that simple.</p> <p>6 Q. Okay.</p> <p>7 A. That's a very simplistic approach to</p> <p>8 discovery.</p> <p>9 Q. Well, when you got here in 1989 with limited</p> <p>10 if no experience in handling civil matters and you got</p> <p>11 your first discovery request which contained a demand</p> <p>12 for production of documents, how did you know how to go</p> <p>13 about finding the documents that were being asked for?</p> <p>14 A. I would ask the discovery coordinator, the</p> <p>15 engineer that was assigned to the case --</p> <p>16 Q. Okay.</p> <p>17 A. -- outside counsel that was experienced. We</p> <p>18 would meet, discuss the issue, how to -- what we're</p> <p>19 looking for, what the scope of the vehicle was, what</p> <p>20 the scope of the search was going to be, how we were</p> <p>21 going to find the documents, who we were going to ask</p> <p>22 for the documents. It was pretty much verbal.</p> <p>23 Q. Okay. So it was more them telling you where</p> <p>24 to go, where -- where they would go or just assigning</p> <p>25 it to them and they knew where to go rather than you</p>
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<p>1 Q. Okay. Were you ever provided with, in any</p> <p>2 form, computer, written, even, you know, an outline</p> <p>3 handwritten which provided guidance if someone told you</p> <p>4 that this is the car we're dealing with and this is the</p> <p>5 part of the car we're dealing with, these are the most</p> <p>6 likely places you would search in order to find</p> <p>7 documents relevant to that particular vehicle and that</p> <p>8 particular issue?</p> <p>9 A. You talk about computers. We're talking</p> <p>10 about 1989?</p> <p>11 Q. Yes.</p> <p>12 A. Okay.</p> <p>13 Q. Well, I'm talking about late '80s, early</p> <p>14 '90s.</p> <p>15 A. Okay. As far as --</p> <p>16 If I understand your question,</p> <p>17 you're asking me to --</p> <p>18 Maybe I don't understand your</p> <p>19 question. Was there a process in place where you push</p> <p>20 one button for if you're doing discovery for a Cadillac</p> <p>21 and another -- push another button if you're doing</p> <p>22 discovery for a Corvette? Is that kind of what the</p> <p>23 approach --</p> <p>24 Q. That would be one aspect. It also could be</p> <p>25 a chart, a written chart, a flowchart where you would</p>	<p>1 telling them I want you to search here, here, or here?</p> <p>2 A. Initially. That's correct.</p> <p>3 Q. Initially. Okay.</p> <p>4 A. Yes.</p> <p>5 Q. And as you, obviously, got more and more</p> <p>6 experience, you knew the repositories of information</p> <p>7 with respect to various vehicles or various component</p> <p>8 parts or things of that nature. Is that a fair</p> <p>9 statement?</p> <p>10 A. I wouldn't say it was -- I knew where the</p> <p>11 repositories were. I was more of -- more familiar with</p> <p>12 the documents themselves.</p> <p>13 Q. And how about where they came from?</p> <p>14 A. I would -- yes. I would say I became more</p> <p>15 familiar where our coordinators asked, whom they asked</p> <p>16 for the documents.</p> <p>17 Q. I'm not sure I understand that. The</p> <p>18 coordinator asks --</p> <p>19 A. Well, I'm not sure what your question is, I</p> <p>20 guess.</p> <p>21 Q. All right. What I asked you was as you</p> <p>22 became more and more experienced --</p> <p>23 A. Okay.</p> <p>24 Q. -- could you say I want a search conducted</p> <p>25 of X, Y, and Z repository of information or did you</p>

1 always rely upon either the discovery coordinator or  
2 the engineer to tell you where the documents were most  
3 likely to be found?

4 A. A little of both.

5 Q. All right. Were you able --

6 If you got a stack of documents from  
7 either the discovery coordinator or the engineer which  
8 were responsive to your requests or the discovery  
9 requests, were you able to look at them and figure out  
10 where they came from?

11 A. In some instances.

12 Q. Okay.

13 A. I mean -- yes. In some instances if it  
14 was -- if we were talking about crash tests, I would  
15 assume the documents came from Milford Proving Ground.  
16 If they were drawings, I would assume they came from  
17 engineering staff. If they were research writing, I'd  
18 assume they came from the library. So I guess the  
19 answer would be yes.

20 Q. Okay. After a period of time could you look  
21 at a document production which you had requested and  
22 was given to you and say, ah-ha, I think they missed --  
23 where are the documents from X place or Y place? Was  
24 that something which you were able to pick up on?

25 A. I'm not sure if I could -- with experienced

1 coordinator, the outside counsel, myself. That's why  
2 we conducted the conference -- conference call, trying  
3 to make sure that we located all the documents, that we  
4 asked all the right people in the corporation for the  
5 documents that, you know, were applicable to the  
6 discovery requests that we got in.

7 Q. Okay. I guess what I'm curious about is  
8 whether there was any kind of checklist you had where  
9 you would get a box of documents or a bunch of  
10 documents and say, okay, now I want to make sure I have  
11 everything and you looked at something else and said,  
12 okay, here's that, here's this, here's this.

13 A. No. The checklist was the discovery itself.  
14 See, I guess that's where I'm confused with your  
15 questions.

16 The discovery comes in. That is  
17 the --

18 Q. The discovery requests.

19 A. The request. That is the moving factor in  
20 the whole discovery process.

21 We met as a team to try to respond  
22 to the discovery to the best of our ability. We would  
23 look at the discovery -- we would look at the  
24 requests -- the questions and then move forward in  
25 saying, okay, for drawings we've got -- this question

1 -- well, yeah, if they miss something obvious like a  
2 drawing or a crash test maybe, but other material, I'm  
3 not sure if I could have.

4 Q. Okay. I guess another way of asking was  
5 were you able to independently cross-reference those  
6 documents with either something you knew about or some  
7 other type of document and make a determination  
8 independently whether everything was contained in that  
9 production for you by the engineer or the discovery  
10 coordinator?

11 A. Well, that's a pretty general question. I  
12 don't know if I can answer that question.

13 Q. Would you like to try or do you want me to  
14 move on to another question?

15 A. You can -- yeah, I think maybe we ought to  
16 move on.

17 Q. Okay. Let me ask it another way.

18 Did you rely upon the discovery  
19 coordinator and the engineer with respect to the  
20 completeness of the documents which were produced for  
21 you or were you able to independently verify whether  
22 what you got was everything that was necessary?

23 A. Both.

24 Q. Both. Okay.

25 A. I would rely on the engineer, the

1 asks for drawings, we're going to request drawings.  
2 This question asks for crash tests, we're going to ask  
3 for crash tests. I guess --

4 That's the best I can answer your  
5 question.

6 Q. Okay. Okay. Within that context in that  
7 framework.

8 A. Right.

9 Q. So you say you ask for drawings and you go  
10 to the engineer and you say we need all the drawings  
11 for whatever car we're talking about. How do you know  
12 when he gives you those drawings that you've got all  
13 the drawings and that there isn't five more back  
14 someplace else that either weren't pulled for some  
15 reason or were misfiled or were -- how -- is there any  
16 cross-reference in the system designed to make sure you  
17 have everything, all of the drawings or all of the  
18 crash tests?

19 A. Well, I think the nature of the request that  
20 goes out asks for everything. The engineers on board  
21 because of his or her expertise and understanding of  
22 the drawing process -- you know, it's not a convoluted  
23 process, it's a straightforward -- you ask for this  
24 type of drawing. You might ask for a layout drawing.  
25 You may ask for a seating position drawing.



8 (Pages 26 to 29)

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<p>1 You're asking for specific drawings 2 to answer the discovery that's been requested. When 3 they come in, the engineers look at it and outside 4 counsel look at it to make sure that they -- the 5 responses comply with what our requests were that will 6 respond to the discovery. 7 Q. I understand that. What I'm getting at is 8 do you necessarily have to rely upon the memory of the 9 engineers and the discovery coordinator to remember 10 where these things are or where they go looking at them 11 rather than having some type of checklist which one 12 would look at and so as to verify that everything had 13 been checked? 14 A. If your question is was there a checklist -- 15 Q. And I'm using that in the broadest sense. 16 A. Yeah. I mean, a piece of paper that has 17 go -- I don't -- no. I don't remember a checklist, 18 check the boxes. 19 I think my response -- and if I 20 didn't make myself clear, I'll try to do it again. We 21 were responding to the discovery. The discovery asked 22 for specific items. We would ask within the 23 corporation for those specific items. 24 Now, your earlier questions were did 25 I participate in that searching for the documents or at</p>	<p>1 all -- give me all the crash tests. So the engineer 2 says here's the scope. The coordinator writes the 3 letter to Milford Proving Grounds. They are the 4 repository for all the documents. You say to them give 5 us the crash tests for the 1999 Blazer. They turn the 6 documents -- produce the documents, our engineer looks 7 at them, turns them over to the coordinator who then 8 turns them over to counsel who produces them. 9 Q. Okay. How does the coordinator know that 10 there has been compliance with the requests for, using 11 your examples, all of the crash tests from the Milford 12 Proving Grounds? 13 A. Through the assistance and review of the 14 engineer and through outside counsel and their 15 expertise and in-house counsel, their expertise, to 16 make sure that we have produced the documents. 17 Q. But that process is more a mental process of 18 review rather than there being some kind of 19 quantitative or actually something to cross-reference 20 that to other than the independent memory of the 21 engineer or the coordinator or the person who pulls the 22 document. Is that a fair statement? 23 A. Well, it's a fair statement, but it's kind 24 of out of context of the process. I mean, you've got 25 it compartmentalized as to just a checklist. It's not</p>
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<p>1 least putting together the request to the corporation 2 for the documents. The answer is yes. Of course, I 3 got better at it, more experience. The answer is yes. 4 And so we would gather the documents, the engineer 5 would review the documents to make sure that they -- 6 that they responded to the discovery and then we 7 produced those -- that material. 8 Q. Okay. So you would rely upon the engineer 9 and his recollection of where documents would be found 10 responsive to the discovery task -- 11 A. No, no. 12 Q. -- that you had given him. 13 A. No. I think that's the disconnect here in 14 this. 15 It's not where the documents were 16 at, it was the type of documents. The drawings -- the 17 crash tests were at the proving ground, there's no 18 mystery to that, but it's what you're looking for. The 19 scope is what -- the engineer would help us set up the 20 scope. So, in other words, if we're talking about the 21 first generation of a vehicle or the second generation 22 of a vehicle or the third generation of a vehicle, 23 that's what the scope is, that's what we're talking 24 about when we talk about scope, what are we looking 25 for, and then the discovery question says give us</p>	<p>1 a checklist situation. It is a -- it is a -- more of a 2 request and then a reliance on the response to the 3 request and a review that there was not something in 4 there that shouldn't be there as far as out of scope or 5 whatever. I'm using that as an example. I mean, 6 you've got it compartmentalized like it's -- you put 7 two teaspoons of flour and a cup of water and you make 8 a cake. I guess that's the disconnect -- 9 Q. Okay. 10 A. -- between your question and my answer. 11 Q. Let me ask it this way then. Tell me 12 everything that you rely upon other than your 13 experience and your memory when you review the 14 documents that have been produced pursuant to your 15 request that everything is contained in that document 16 request that you asked for. 17 A. We rely on the -- 18 We rely on our memory. You say 19 beyond that, but we -- again, we rely on our -- 20 We rely on the request from the 21 plaintiff, the discovery request as to the -- 22 Q. Well, how does the discovery request tell 23 you that you got everything other than the fact you 24 requested it? 25 A. I'm getting there.</p>

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1 Q. Okay.

2 A. So we know what we're looking for and then  
3 we submit a request. When the material comes in, we  
4 rely on the source of the information as having  
5 gathered all the information and with the expertise --  
6 I mean, if you ask for a donut and you get a steak, you  
7 know you got something you didn't ask for. So we rely  
8 on the parties that provide us the information and we  
9 rely on our expertise.

10 Q. Okay. So there's no other independent  
11 cross-reference to check it.

12 A. Not that I can think of at this time.

13 Q. Okay. So it's a system that relies upon  
14 memory and expertise and reliance upon people's memory  
15 and expertise as you move up the chain from where the  
16 documents are to the ultimate production.

17 A. Correct.

18 Q. Thank you.

19 Let's go back because that was kind  
20 of a tangent.

21 When you're assigned a case, a  
22 personal injury products liability case, are you the  
23 head honcho, so to speak, in terms of managing that  
24 case and making decisions relative to that case?

25 MR. VINES: Maurice, just to

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1 but I would say ultimately I probably had veto power.

2 Q. Okay. So there was veto power, but there  
3 was an appellate process kind of if you needed to.

4 A. Okay.

5 Q. Were you responsible for retaining the  
6 outside counsel in cases where they weren't already  
7 assigned?

8 A. Correct.

9 Q. Okay. Did you have the authority to pick  
10 who you wanted to assign to any particular case?

11 A. Correct.

12 Q. Okay.

13 A. Within the scope of people approved to  
14 represent General Motors.

15 Q. Right. There was an approved list of people  
16 that you could pick from.

17 A. Right.

18 Q. How about local counsel? Was that also  
19 something which came off an approved list?

20 A. I don't think so. I don't remember. I  
21 think we -- I think that was pretty much the discretion  
22 of the trial counsel.

23 Q. Okay.

24 A. His or her choice who the local counsel  
25 would be.

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1 clarify, are you talking about back in the time of the  
2 Green case?

3 MR. DONOVAN: Yes. Yes.

4 MR. VINES: Okay.

5 THE WITNESS: When I was assigned  
6 the Green case?

7 BY MR. DONOVAN:

8 Q. Not just the Green case. Any case back in  
9 the late '80s, early '90s. Were you the person in  
10 charge of managing and making decisions relative to  
11 that case?

12 A. Correct.

13 Q. All right. And did you have the ultimate  
14 veto power with respect to decisions which were being  
15 made about the case and what to do and what not to do?

16 A. I would say yes. I mean, me or my  
17 supervisor. If counsel disagreed with my decision on a  
18 veto power issue, he or she could always go up and talk  
19 to my supervisor or his supervisor. So I think you  
20 could --

21 Did I have the ultimate? No. I had  
22 veto power or I helped make decisions or I assisted in  
23 making decisions relying on the expertise of our trial  
24 counsel, and I may add, our experienced trial counsel  
25 who I relied on, and so it was kind of a mutual thing,

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1 Q. And when you're talking about trial counsel,  
2 is that the same as specialty counsel or --

3 A. Trial counsel.

4 Q. Okay. We used the words yesterday that  
5 there was -- different firms had different specialties  
6 and --

7 A. Oh, okay. I see. I wasn't here yesterday,  
8 so I didn't --

9 Okay. So -- I'm sorry. Go ahead.

10 Q. Are you familiar with that concept of  
11 specialty firms?

12 A. Specialty firms.

13 Q. Yes.

14 A. Firms that handle specialty cases.

15 Q. In other words, it is my understanding, and  
16 correct me if I'm wrong, but the Rumberger firm --

17 Are you familiar with that firm in  
18 Florida?

19 A. Yes.

20 Q. -- handled roof and rollover cases and that  
21 the Lavin firm down in south Jersey handled fire type  
22 cases and --

23 A. Exclusively?

24 Q. Not exclusively, but they, you know --

25 A. Okay. See, that's where I misunderstood

10 (Pages 34 to 37)

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<p>1 your question. I'm sorry.</p> <p>2 Firms handled across the board a</p> <p>3 multitude of type of issues. Did they handle some</p> <p>4 specialties like rollovers or fires? Yes. Did they do</p> <p>5 other work? Yes.</p> <p>6 Q. Okay. Was that a concept that was</p> <p>7 developing, you know, more and more that different</p> <p>8 national firms should handle different types of</p> <p>9 situations or claims?</p> <p>10 A. Do you mean in 1989, 1990?</p> <p>11 Q. Late '80s, early '90s.</p> <p>12 A. Was it developing?</p> <p>13 Q. Yes.</p> <p>14 A. Don't think so.</p> <p>15 Q. No. Okay.</p> <p>16 Were you also involved in making</p> <p>17 decisions with respect to which cases to settle or</p> <p>18 which cases to try?</p> <p>19 A. Correct.</p> <p>20 Q. Now, from your testimony at the privilege</p> <p>21 hearing it's my understanding that you were assigned</p> <p>22 cases either by geographic area, such as you were</p> <p>23 assigned Massachusetts at one point in time and</p> <p>24 Michigan at one point in time.</p> <p>25 MR. VINES: Maurice, I'm sorry, can</p>	<p>1 were geographic assignments and how many of those cases</p> <p>2 were specialty wheel and tire cases?</p> <p>3 A. I can't remember.</p> <p>4 Q. Half and half?</p> <p>5 A. No. I can't remember. I couldn't even</p> <p>6 venture a guess.</p> <p>7 Q. Okay. And is that basically what you</p> <p>8 handled from 1989 till November of 1990?</p> <p>9 A. I handled tire and wheel mismatch, ingress,</p> <p>10 egress, which was a specialty. I handled Michigan,</p> <p>11 geographic, and I believe I handled Massachusetts</p> <p>12 during that time period.</p> <p>13 Q. Okay. In the geographic cases you handled</p> <p>14 what type of -- what type of cases were you handling in</p> <p>15 '89 up till November of 1990?</p> <p>16 A. Everything that wasn't a specialty.</p> <p>17 Q. Okay. Like what wasn't a specialty?</p> <p>18 A. Some brake issues or parking brakes, window</p> <p>19 controls, door -- some door latches, although there was</p> <p>20 -- there were some seat belts, padding issues, glazing</p> <p>21 issues. That's about all I can remember.</p> <p>22 Q. Okay. All right.</p> <p>23 A. A myriad type of --</p> <p>24 Q. In November of 1990 you took over the</p> <p>25 caseload of Doug Brown with respect to rollover and</p>
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<p>1 you refer us to where in that testimony you're getting</p> <p>2 it from?</p> <p>3 MR. DONOVAN: I really can't and I</p> <p>4 don't think it's that important that I'm going to spend</p> <p>5 my time going through it to find it, so I'm just going</p> <p>6 to ask the question. I can ask it this way.</p> <p>7 BY MR. DONOVAN:</p> <p>8 Q. Were you ever assigned Massachusetts as one</p> <p>9 of the geographic areas where you handled?</p> <p>10 A. Yes.</p> <p>11 Q. Were you ever assigned Michigan as one of</p> <p>12 the geographic areas that you handled?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. And in addition to geographic areas,</p> <p>15 were you assigned cases by specialty?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. And your specialty at one point in</p> <p>18 time was tire and wheel cases?</p> <p>19 A. Correct. Multi-piece wheels and tire and</p> <p>20 wheel mismatch.</p> <p>21 Q. So that's when you first started?</p> <p>22 A. Right.</p> <p>23 Q. Okay. How many of the cases --</p> <p>24 You told me you got about 100 cases</p> <p>25 when you walked in the door. How many of those cases</p>	<p>1 roof cases; correct?</p> <p>2 A. Correct.</p> <p>3 Q. All right. And my understanding is that was</p> <p>4 about 75 cases that you got from Doug Brown, give or</p> <p>5 take?</p> <p>6 A. Yeah. Best of my recollection.</p> <p>7 Q. Was that in addition to the 100 cases you</p> <p>8 already had?</p> <p>9 A. Correct.</p> <p>10 Q. So now you were managing 175 cases?</p> <p>11 A. The cases I got from Doug were either --</p> <p>12 yeah, 50 to --</p> <p>13 All right. I would not disagree.</p> <p>14 Somewhere in that 150 to 175 range, I think.</p> <p>15 Q. Okay. Just give me a ballpark back in late</p> <p>16 '80s, '90s. How many attorneys were -- in-house</p> <p>17 attorneys from General Motors were handling product</p> <p>18 liability litigation involving crashworthiness?</p> <p>19 A. I think there were about 22 maybe, give or</p> <p>20 take a few.</p> <p>21 Q. Okay.</p> <p>22 A. Maybe -- I'd say anywhere between 18 and 20,</p> <p>23 22. I don't remember exactly.</p> <p>24 Q. And was there an average caseload per</p> <p>25 attorney?</p>

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1 A. I don't know.

2 Q. You don't know.

3 Do you know whether the other  
4 attorneys were handling approximately the same number  
5 of cases as you were, about 175?

6 A. I would -- I would think so.

7 Q. Okay. Now, that was your -- in November of  
8 1990 was that your first experience in handling roof  
9 crush and/or rollover cases?

10 A. Correct.

11 Q. Okay. And these 75 cases you got from Doug  
12 Brown, they would have included rollover and roof crush  
13 related to rollover and roof crush unrelated to  
14 rollover?

15 A. Correct. Roof crush and rollover.

16 Q. Okay. Well, roof crush can also be caused  
17 by rollover.

18 A. Correct.

19 Q. Or do you classify those as two different?

20 A. Could be classified as two different -- two  
21 different. Roof crush, whether the vehicle rolled over  
22 or not, as you indicated in one of your questions, and  
23 also rollover, whether the vehicle was alleged to have  
24 a propensity to roll over.

25 Q. Okay. I'm trying to figure out the lexicon

1 So you're getting into a situation

2 where if you focus on the vehicle rolling over, that  
3 was -- if it was alleged that there were some  
4 instability to the vehicle, that -- I handled those  
5 cases.

6 Q. Okay. And --

7 A. If the vehicle rolled over and there was no  
8 allegation of crashworthiness, I wouldn't handle the  
9 case.

10 Q. So if the allegation was a certain vehicle  
11 just had a propensity to roll over, that wouldn't be  
12 your case.

13 A. Yes, it would.

14 Q. That would be your case.

15 A. Correct. If the vehicle rolled over, but  
16 the claim was the airbag didn't go off, I wouldn't  
17 handle the case.

18 Q. I see. I see.

19 So it was more geared to what the  
20 injury causation mechanism was. In other words, if it  
21 was claimed that the airbag caused the injury --

22 A. Or first collision or second collision. We  
23 can talk about it that way.

24 Q. Okay.

25 A. I mean, was it why did the vehicle roll

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1 here.

2 Is the category roof crush and under  
3 that we have rollover and non-rollover or is the  
4 category rollover and underneath that we have roof  
5 crush and non-roof crush?

6 A. Now you've confused me.

7 Q. Okay. That's because you confused me.

8 A. It's rollover -- it's rollover, roof crush.

9 Q. Two separate categories.

10 A. Well, yes.

11 Q. Okay.

12 A. Sometimes they blend together, sometimes  
13 they could be separate.

14 Q. So in rollover cases you can have roof crush  
15 or not have roof crush?

16 A. Rollover case you can --

17 Right. I mean -- okay. The -- the  
18 terminology is --

19 In rollover -- in rollover cases you  
20 could have the issue as why the vehicle rolled over or  
21 how the vehicle rolled over, what the allegation of the  
22 rollover was. Could you have roof crush? Yes. Could  
23 you not have roof crush? Yes. Could you have a  
24 crashworthiness claim? Yes. Could you not have a  
25 crashworthiness claim? Yes.

1 over. If that was the issue, why the vehicle rolled  
2 over, if it was because of alleged instability of the  
3 vehicle, I would handle the case.

4 Q. Okay. That would -- and that would have  
5 been starting in November of 1990.

6 A. Correct.

7 Q. Okay. You hadn't handled any --

8 A. Well, November --

9 It was either -- I started handling  
10 those cases late November, early December to the best  
11 of my -- after Thanksgiving before Christmas holiday,  
12 somewhere, I think, in that area.

13 Q. In the roof crush non-rollover cases.

14 A. Roof crush. Okay.

15 Q. Okay? What kind of allegations were there  
16 that you handled with respect to the roof crush  
17 causation? And I think those words are out of order,  
18 but --

19 A. Yeah. Let me --

20 Q. Want me do it --

21 A. Yeah. Do it again, if you could.

22 Q. Taking rollover out of it. In the roof  
23 crush cases which were not rollovers what was the  
24 causation mechanism for the roof crush?

25 A. Could be a tree falling on it.

12 (Pages 42 to 45)

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<p>1 Q. Okay.</p> <p>2 A. Could be a car hitting a horse or a deer.</p> <p>3 Q. Did you handle those cases?</p> <p>4 A. Yes. Yes.</p> <p>5 Q. I'm asking specifically what cases you</p> <p>6 handled.</p> <p>7 A. Yes. Yes.</p> <p>8 Q. Okay. Anything else you can think of?</p> <p>9 A. Which caused the roof other than --</p> <p>10 Q. Yeah.</p> <p>11 A. -- it rolling --</p> <p>12 Q. Yes.</p> <p>13 A. -- crushing other than it rolling over.</p> <p>14 Q. Yes.</p> <p>15 A. That's basically complete, I think.</p> <p>16 Q. So that category would be something</p> <p>17 colliding with the roof itself.</p> <p>18 A. Correct.</p> <p>19 Q. All right.</p> <p>20 A. Correct.</p> <p>21 Q. And were the allegations the roof should</p> <p>22 have been able to withstand whatever the forces were of</p> <p>23 whatever this object were coming into contact and</p> <p>24 colliding with the roof?</p> <p>25 A. Yes, but more so depending on what the roof</p>	<p>1 any F-car cases?</p> <p>2 A. Before I received the Michael Green case as</p> <p>3 part of the assignment of defending General Motors in</p> <p>4 rollover roof crush cases.</p> <p>5 Q. Yes.</p> <p>6 A. Did I handle any other F-car cases --</p> <p>7 Q. Yes.</p> <p>8 A. -- prior to that. I've got to think about</p> <p>9 that.</p> <p>10 I don't remember.</p> <p>11 Q. Okay. You don't remember handling any or</p> <p>12 you have no recollection one way or the other?</p> <p>13 A. I have no recollection one way or the other.</p> <p>14 Q. Okay. How about T-roof cases before</p> <p>15 November of 1990?</p> <p>16 A. I don't -- I don't have a recollection.</p> <p>17 Q. One way or the other.</p> <p>18 A. Right.</p> <p>19 Q. Okay. Do you still handle rollover and roof</p> <p>20 crush cases?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. So you've been doing that since 1990?</p> <p>23 A. Yeah, 1990. Late 1990, early 1991. Yes.</p> <p>24 Q. Any other specialties that you also adopted</p> <p>25 during the years you've been here?</p>
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<p>1 collided with. If it collided with a horse or a deer</p> <p>2 or a moose, it was sometimes more than just the roof</p> <p>3 should have withstood the forces. There could have</p> <p>4 been an issue about the porthole of intrusion into the</p> <p>5 vehicle and the design of the roof and kind of a</p> <p>6 combination of roof glass, roof hood design allowed the</p> <p>7 deer to slide up into the windshield and penetrate the</p> <p>8 vehicle. So there was a combination of factors.</p> <p>9 Q. Okay.</p> <p>10 A. So it wasn't just roof crushing, et cetera.</p> <p>11 It's more broad. It's broader than that.</p> <p>12 Q. The Green case, Michael Green versus General</p> <p>13 Motors was one of the cases you received in that 75</p> <p>14 cases you received from Doug --</p> <p>15 A. Yeah.</p> <p>16 Q. Green.</p> <p>17 A. 50 to 75.</p> <p>18 Q. Okay.</p> <p>19 A. I hate to be -- because I can't. Okay.</p> <p>20 We'll go with 75.</p> <p>21 Q. In the cases you received from Doug Brown</p> <p>22 back in November of 1990 was the Michael Green case;</p> <p>23 correct?</p> <p>24 A. Correct.</p> <p>25 Q. All right. Before that had you ever handled</p>	<p>1 A. Oh. We have enough time? Yeah. Yes.</p> <p>2 Specialties. geographic. Yes.</p> <p>3 Q. Well, I'm not concerned about the</p> <p>4 geographic. I'm interested in the specialties.</p> <p>5 A. Yes.</p> <p>6 Q. What -- give me the top three.</p> <p>7 A. Door latches. I handled inertial unlatch</p> <p>8 seat belt allegation, and I handled -- I believe I</p> <p>9 handled comfort feature cases for a while, some seat</p> <p>10 belt allegations.</p> <p>11 Q. I want to talk a little bit about your</p> <p>12 experience with the F-car, the Camaros and Firebirds.</p> <p>13 A. Okay. You know, let me -- I'm not sure if I</p> <p>14 handled comfort feature cases.</p> <p>15 Q. I don't even know what that is, so it's</p> <p>16 okay.</p> <p>17 A. I think it -- yeah. I think it was just --</p> <p>18 yeah. Okay. I just wanted to make sure. It may have</p> <p>19 just been a pass-through assignment that I -- I</p> <p>20 baby-sat some of those cases until they were assigned</p> <p>21 to another person on staff.</p> <p>22 Q. Okay. We established that you can't recall</p> <p>23 whether you had ever handled F-car cases or T-roof</p> <p>24 cases before November of -- November, December of 1990.</p> <p>25 You've handled them since then.</p>

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1 A. Correct.

2 Q. Okay. How many cases have you handled  
3 involving F-car?

4 A. F-car itself? Any part of the F-car or  
5 F-car roof?

6 Q. Well, if you can break it down, okay, if you  
7 can't, then tell me which one you're giving me.

8 A. Okay. As far as the roof claims. Let's  
9 see. Five or six with roof claim cases.

10 Non-roof claim, non-rollover roof  
11 crush cases on an F-car, I can't tell you.

12 Q. Okay.

13 A. I know there were some, but, I mean, I don't  
14 know what -- I couldn't put a number to some. I  
15 remember handling some, but --

16 Q. The five or six cases you just mentioned,  
17 that includes rollover F-car cases or not?

18 A. Yes. The five cases -- five, six cases I  
19 handled that I mentioned were rollover roof crush  
20 cases.

21 Q. Okay. But you couldn't subdivide that down  
22 into non-rollover F-car roof cases such as the Green  
23 case.

24 A. No. The Green case was a rollover case.

25 Q. It was?

1 non-rollover.

2 BY MR. DONOVAN:

3 Q. F-car.

4 A. Roof crush cases with T-roofs.

5 Q. Correct, other than Michael Green,  
6 obviously, from that category.

7 A. Okay. Okay. So other than Michael Green  
8 how many did I handle?

9 Q. If you did.

10 A. Okay. With T-roofs. Rollover cases with  
11 T-roofs.

12 I think, to the best of my  
13 recollection, there were two.

14 Q. Two in addition to Michael Green?

15 A. No. One -- I think one in addition to  
16 Michael Green.

17 Q. Okay. Do you remember the name of that  
18 case?

19 A. I believe it was Wendy Harris.

20 Q. That was after the Michael Green case.

21 A. Correct.

22 Q. And that was a case coming from New Jersey?

23 A. Correct.

24 Q. So would Michael Green's case have been the  
25 first T-roof case where there was an allegation of roof

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1 A. Yeah.

2 Q. Sure.

3 A. That's what, I believe, that some of the  
4 witnesses said, that the vehicle rolled over and caught  
5 on fire, from the best of my recollection.

6 Q. Do you know whether the Green case was tried  
7 as a rollover case?

8 A. Which trial?

9 Q. Either, one or two.

10 A. Yeah. I thought -- if I remember correctly,  
11 I believe one was. The vehicles hit the school bus and  
12 the rear spun out and rolled over and during the  
13 rollover Mr. Green was ejected and hit his head on the  
14 concrete and the vehicle continued to roll and then  
15 caught on fire. I believe that was General Motors' --  
16 I think that's the facts.

17 Q. Okay. That's your best recollection.

18 A. Yes.

19 Q. Okay. How about either rollover or  
20 non-roller F -- non-rollover F-car cases with T-roofs?

21 MR. VINES: I'm sorry. I didn't  
22 hear the last part of that.

23 THE WITNESS: Yeah.

24 MR. DONOVAN: With T-roofs.

25 THE WITNESS: Rollover or

1 crush that you handled?

2 A. Rollover roof crush?

3 Q. (Nodded).

4 A. Yes. Yes.

5 Q. I'm just trying to find something, which I'm  
6 having a little difficulty doing, so just give me  
7 another minute, and if I can't --

8 A. Okay.

9 Q. -- we'll just move on.

10 Do you have any recollection of  
11 reviewing the accident reconstruction which was done by  
12 GM's expert, Mr. Orlowski?

13 A. I have no recollection.

14 Q. Okay. Are you familiar with the Bishop  
15 versus General Motors case?

16 A. Yes.

17 Q. That was a case handled by Rumberger Kirk?

18 A. Correct.

19 Q. And that was an F-car hardtop case?

20 A. Correct.

21 Q. And I think that was the first case of yours  
22 to ever go to trial?

23 A. No.

24 Q. No?

25 A. That was, I believe, the second rollover

14 (Pages 50 to 53)

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<p>1 roof crush case to go to trial.</p> <p>2 Q. Were you involved in the document production</p> <p>3 in that case?</p> <p>4 A. In the Bishop case?</p> <p>5 Q. Yes.</p> <p>6 A. No.</p> <p>7 Q. Okay. Had that been accomplished before you</p> <p>8 were assigned that?</p> <p>9 A. Correct.</p> <p>10 Q. So, in other words, that was a case which</p> <p>11 was already started before November of 1990.</p> <p>12 A. Right. It was a mature case when I took</p> <p>13 over and they started the trial and, in fact, started</p> <p>14 the trial in the new year, January of 1991, and that</p> <p>15 was the second trial that -- that was going when -- we</p> <p>16 already had one trial going and then the Bishop case</p> <p>17 was the second trial, and then there was a third trial</p> <p>18 in that month that spilled over into February of 1991.</p> <p>19 So we had three trials going at the same time.</p> <p>20 Q. Three cases that you were involved -- that</p> <p>21 you were handling?</p> <p>22 A. Yes. Yes.</p> <p>23 Q. Okay. Do you know the name of the first</p> <p>24 case that was already ongoing?</p> <p>25 A. I believe it was a case in Texas. It was --</p>	<p>1 Center documents produced in the discovery in that</p> <p>2 case, you couldn't tell me one way or the other?</p> <p>3 A. I couldn't tell you one way or another.</p> <p>4 Q. Okay. Are you familiar with what we call</p> <p>5 the A through H documents?</p> <p>6 A. A through -- yes.</p> <p>7 Q. Yes. Those are the documents that were</p> <p>8 supplemented in the appellate record in Green?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. So I assume you also couldn't answer</p> <p>11 whether those documents, A through H, or any one of</p> <p>12 them had ever been produced in the Bishop case.</p> <p>13 A. Correct.</p> <p>14 Q. You don't know one way or the other.</p> <p>15 A. I don't know.</p> <p>16 Q. Okay. Harris was tried in 2004?</p> <p>17 A. That sounds right.</p> <p>18 Q. And Green was tried -- at least Green II was</p> <p>19 tried in 1996. So Harris was about eight years after</p> <p>20 Green?</p> <p>21 A. Correct.</p> <p>22 Q. How about Cox versus General Motors?</p> <p>23 A. That was tried in 1991.</p> <p>24 Q. Okay. Was that one of those ongoing -- one</p> <p>25 of the three cases you spoke about earlier, third case</p>
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<p>1 it wasn't an F-car. I think it was a Blazer case.</p> <p>2 Q. Okay. Rollover?</p> <p>3 A. Yes. Rollover roof crush.</p> <p>4 Q. Okay.</p> <p>5 A. And then the Bishop case.</p> <p>6 Q. Was an F-car.</p> <p>7 A. Yes. Correct.</p> <p>8 Q. And then what about the third one?</p> <p>9 A. The third case was a case that was tried in</p> <p>10 Carolinas, and I forget whether it was North Carolina</p> <p>11 or South Carolina. The case was not an F-car case.</p> <p>12 Q. Okay. In the Bishop case, which was an</p> <p>13 F-car case, were you familiar with the discovery that</p> <p>14 was produced in that case, did you ever review it?</p> <p>15 A. I don't remember.</p> <p>16 Q. You don't remember one way or the --</p> <p>17 A. I don't -- I don't --</p> <p>18 Q. Would that --</p> <p>19 A. I don't think I --</p> <p>20 I don't remember, but I don't</p> <p>21 think -- the best of my recollection, I don't think I</p> <p>22 looked at any discovery in that case, but, again, I</p> <p>23 don't remember. It's been about 20 years now.</p> <p>24 Q. So if I asked you whether you had a</p> <p>25 recollection as to whether there were any F-car Project</p>	<p>1 specifically?</p> <p>2 A. That wasn't a -- that wasn't a --</p> <p>3 That was an F-car, but it wasn't a</p> <p>4 T-top. It was a --</p> <p>5 Q. Was it rollover?</p> <p>6 A. It was a rollover, correct. Rollover roof</p> <p>7 crush.</p> <p>8 Q. Are you familiar with the discovery which</p> <p>9 General Motors provided in the Cox case?</p> <p>10 A. My limited --</p> <p>11 No. The answer is no.</p> <p>12 Q. Okay. So, again, if I asked you --</p> <p>13 A. Let me -- let me rephrase it.</p> <p>14 Yes, to some extent. It was more</p> <p>15 the discovery about the aftermarket modification on the</p> <p>16 vehicle.</p> <p>17 Q. Was there an aftermarket modification on</p> <p>18 that car?</p> <p>19 A. The best of my recollection, yes.</p> <p>20 Q. So the roof was not a GM roof?</p> <p>21 A. I believe it was not.</p> <p>22 Q. Is this the case where the roof was cut out</p> <p>23 of the --</p> <p>24 A. That's correct.</p> <p>25 Q. Do you know with whatever familiarity you</p>

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1 are with the discovery which was exchanged in that case  
2 whether there were any documents produced from the  
3 F-car Project Center file?

4 A. No, not to my recollection. My main  
5 recollection was focusing on the aftermarket  
6 modification work, and that was -- that's basically  
7 what I remember in that case.

8 Q. Okay. I just want to be clear. There were  
9 no F-car Project Center documents in there or you don't  
10 recall whether there were F-car Project Center  
11 documents in there?

12 A. Oh, I don't recall.

13 Q. You don't recall. Okay. I thought you said  
14 there weren't, so I --

15 A. No.

16 Q. -- just wanted to get that clear.

17 A. No. Well, I -- okay. No, I don't recall.

18 Q. Okay. And how about the A through H  
19 documents? Any recollection of whether those documents  
20 were produced in the Cox case?

21 A. No.

22 Q. Do you recall any other -- any case that you  
23 handled ever where -- with an F-car and a T-roof where  
24 the allegation was made that a side angle collision  
25 caused the roof to collapse in the absence of a

1 MR. VINES: Now?

2 MR. DONOVAN: Well, back in 80s --  
3 late 80s, early 90s.

4 THE WITNESS: Did we have form  
5 objections that we --

6 BY MR. DONOVAN:

7 Q. Form objections, form answers.

8 A. Could you give me an example?

9 Q. I can only think of the ones I use.

10 Well, you know what a form answer  
11 is, or is that where we're having the problem?

12 A. No form objection. I mean, form answer --  
13 form objection is where we're having a problem.

14 Q. All right.

15 A. That's an example.

16 Q. Do you have form objections?

17 A. No.

18 Q. No.

19 Okay. Here's the response that GM  
20 gave to number 7 of plaintiff's answers to  
21 interrogatories. I don't know what version it was, but  
22 I just want -- I'm just concerned about the language.  
23 GM objects to this interrogatory --

24 MR. VINES: Mr. Donovan, can you  
25 just identify that document a little bit more?

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1 rollover?

2 A. No.

3 Q. Now, as part of your role as the in-house  
4 attorney for General Motors handling products liability  
5 crashworthy claims, do you get involved in answering  
6 interrogatories?

7 A. Yes.

8 Q. Okay. Do you ever get involved in drafting  
9 the answers or is that something that you just do in a  
10 review capacity after they've been answered by someone  
11 else?

12 A. A review capacity pretty much.

13 Q. Okay. And is it the outside counsel who  
14 actually drafts the responses to them?

15 A. They do the first draft, provide me with the  
16 draft, the engineer will take a look at them, the  
17 draft, see if it's correct. That's pretty much my  
18 role.

19 Q. Okay. Does GM have any form phrases or form  
20 responses or form objections that are provided to  
21 outside counsel to provide specific responses to  
22 specific kinds of questions?

23 MR. VINES: To clarify, Maurice, do  
24 you mean in the Green case?

25 MR. DONOVAN: No. In any case.

1 MR. DONOVAN: Yeah. It's -- I'm  
2 looking at privilege document I19. I'm looking at  
3 Bates number page 581, which is the second page of this  
4 document. It's supplemental responses of General  
5 Motors Corporation to plaintiff's interrogatories and  
6 I'm looking at answer to interrogatory number 7.

7 MR. VINES: Thank you.

8 BY MR. DONOVAN:

9 Q. In C of that it says, GM objects to this  
10 interrogatory. It's seeking information not reasonably  
11 calculated to lead to the discovery of admissible  
12 evidence. If further objects this interrogatory is  
13 vague and ambiguous and that plaintiff fails to define  
14 with reasonable particularity what is meant by the  
15 following terms, and then they give a whole bunch of  
16 terms.

17 Okay. That to me sounds like pretty  
18 much form stock language. Would you agree?

19 A. No.

20 Q. No. You think that specifically was  
21 tailored to answer this interrogatory?

22 A. In the law of the state and --

23 Q. Okay.

24 A. Per civil procedure. All the rules. I  
25 would say that...



16 (Pages 58 to 61)

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1 Q. So that response would have been drafted by  
2 outside counsel without General Motors providing any  
3 kind of format or wording for that.

4 A. That's a dif- -- that question -- I'm sorry.

5 If I understand your question, that  
6 response would have been -- would have been drafted by  
7 outside counsel and reviewed by in-house counsel and  
8 agreed upon and provided. Would there have been a form  
9 respo- -- no.

10 Q. Okay. Do you have form responses that when  
11 you review them, you insert with respect to any  
12 specific type of question?

13 MR. VINES: And I'll object if  
14 you're asking about whether he does that now. I take  
15 it you mean back in the day.

16 MR. DONOVAN: Late 80s, early 90s.

17 THE WITNESS: Would that be for  
18 answering them or objecting to them?

19 BY MR. DONOVAN:

20 Q. Either or.

21 A. Answering? Yes.

22 Q. Okay. And is this language that you have  
23 put together over the years?

24 A. Language that was fact-based language  
25 regarding issues like insurance coverage, the date of

1 incorporation and location, where General Motor is  
2 incorporated, their main place of business, things like  
3 that. Factually-based information that is form drafted  
4 and goes into the answers to interrogatories.

5 Q. Okay. And that would be in response to  
6 probably a question that comes very often, which is set  
7 forth the name of this defendant, where they were --

8 A. Sure.

9 Q. -- incorporated, what their address is --

10 A. Exactly.

11 Q. -- da, da, da, da, da.

12 A. So that would be -- that's a form answer.

13 Q. Okay. I'm talking about like more -- well,  
14 strike that.

15 Now, you received the Green case in  
16 November of 1990 and you handled that case through its  
17 conclusion?

18 A. Correct.

19 Q. Okay. That would be through the appeal up  
20 to the appellate division back down to the remand  
21 hearing?

22 A. Correct.

23 Q. All right. And when I say the remand  
24 hearing, you're familiar with that?

25 A. Right.

1 Q. All right. When you got the case from Mr.  
2 Brown who had been handling it up to that point in  
3 time, did you review the file?

4 A. Yes.

5 Q. Did you make any type of independent  
6 determination whether the discovery was intact and  
7 completed and done with or was there still work that  
8 needed to be done on that?

9 A. No. I think -- best of my recollection, I  
10 believe that the discovery, as far as I knew, was  
11 completed. I believe that our trial counsel had  
12 indicated a couple times that they thought the  
13 discovery was answered. I don't know if Doug Brown  
14 told me that or it was -- I think it was outside  
15 counsel informed me that -- that -- because we were  
16 ready to go to trial in the case and then it got  
17 adjourned.

18 Q. It actually didn't go to trial for another  
19 couple years.

20 A. Couple more years, right. If I remember  
21 correctly, '93, I think.

22 Q. Yeah. That was the first --

23 Did you make any effort to look at  
24 the discovery when you received the file and make a  
25 determination as to whether you thought it was

1 complete? And I'm talking about when you got the file.

2 A. Oh, when I got the file.

3 Q. Any time. Yeah.

4 A. No.

5 Q. Would you even have been able to do that  
6 given your limited experience in dealing with these  
7 type of cars up to that point in time?

8 A. I'm sorry. Would I have --

9 Could you repeat that question?

10 Q. Yeah.

11 Given your limited experience in  
12 defending roof crush cases, would you have been able to  
13 look at the discovery and say independently you think  
14 something was missing or wasn't contained there?

15 A. Oh, I think I -- I could have taken a shot  
16 at it. I think I could have -- as far as documents and  
17 drawings, tests, I think I could have. That's it.  
18 period.

19 Q. Okay. The first piece of correspondence I  
20 have you copied on the privilege log is document 192,  
21 which is a letter dated January 18th, 1991, from a  
22 Nancy Genova copied to you.

23 Do you know who Nancy Genova is?

24 A. She was discovery coordinator.

25 Q. Okay. She was handling the Green file at

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1 that time?

2 A. Best of my recollection.

3 Q. Okay. And the correspondence indicates,  
4 it's copied to you, it's a letter which -- and I can  
5 show it to you, but unfortunately I have to show it to  
6 you on the computer rather than in hardcopy. It's  
7 actually a letter to Dave Coulson, you're copied on it  
8 and it's forwarding certain discovery, Bates numbers  
9 100247 through 100264, it's also copied to Mr. Rice,  
10 and the description of those documents are An Analysis  
11 of the National Crash Severity Study Data, Injury  
12 Frequency and Severity in Rollover Car Crashes as  
13 Related to Occupant Ejection, Contacts and Roof Damage,  
14 and then the second document is Determination of  
15 Effective Surface Coefficients For Use in Acceleration  
16 Performance Simulations.

17 Any recollection of either of those  
18 two documents?

19 A. No.

20 Q. No.

21 Do you know what type of documents  
22 those are or where they come from?

23 A. It sounds like the kind of documents that  
24 would come from the GM library.

25 Q. These are kind of research documents --

1 Q. And was that just part of your general  
2 review of the file or was there some other reason why  
3 you were going through that?

4 A. I don't -- I don't know if I can answer that  
5 question --

6 Q. Okay.

7 A. -- the way it's asked.

8 MR. DONOVAN: Why don't we mark  
9 this. We didn't mark it yesterday, so we'll do it  
10 today so we have some Z documents.

11 ZIOLKOWSKI EXHIBIT NO. 1  
12 WAS MARKED BY THE REPORTER  
13 FOR IDENTIFICATION

14 MR. VINES: Do you have any more  
15 copies?

16 MR. DONOVAN: It's the Judge Ferentz  
17 order.

18 MR. VINES: Okay.

19 MR. CARROLL: Mike has one.

20 MR. DONOVAN: I can find you one if  
21 you want it.

22 BY MR. DONOVAN:

23 Q. I'm going to show you what's been marked  
24 Ziolkowski 1, and is it your understanding that that's  
25 the order?

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1 A. Right.

2 Q. -- rather than, you know, design or  
3 manufacture --

4 A. Right.

5 Q. -- documents?

6 A. Right.

7 Q. Okay. Were you at all involved in December  
8 of 1991 with requesting that those documents be  
9 produced in Green?

10 A. December of '91?

11 Q. I'm sorry. January of '91. I'm sorry.

12 A. I was not involved in the production of  
13 those documents.

14 Q. Okay. Do you recall those documents being  
15 produced in other F-car rollover cases?

16 A. I don't know.

17 Q. Were you aware when you took over that case  
18 that Judge Ferentz from Essex County had entered an  
19 order in August of 1990 requiring GM to provide more  
20 specific answers to insert in interrogatories and  
21 demand for production of documents?

22 A. I became aware of it.

23 Q. Okay. Did you ever have the opportunity to  
24 review that order?

25 A. I believe I did.

1 MR. DONOVAN: I have one here, Mike.

2 BY MR. DONOVAN:

3 Q. Is that the order we were just speaking  
4 about that you reviewed?

5 A. Yes.

6 Q. That look familiar?

7 A. Yes.

8 Q. Okay. And I think the question I'd asked  
9 you was in what context had you reviewed that order.  
10 Was it just part of your general review of the whole  
11 file or was there a more specific reason for reviewing  
12 it?

13 A. I think -- the best of my recollection is  
14 that I reviewed this order in relationship to my  
15 attention being brought to documents that were being  
16 produced in response to this order, documents that were  
17 located by the Rumberger firm in July of '91. I  
18 specifically went back and reviewed this order.

19 I don't have -- I remember either  
20 reviewing the order or Doug Brown telling me that there  
21 was an order to produce documents prior to that, but I  
22 don't remember, but it was my understanding that that  
23 order -- this order had already been met.

24 MR. VINES: Can we go off the record  
25 for one second?

18 (Pages 66 to 69)

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1 MR. DONOVAN: Sure.  
2 MR. VINES: Just want to get my  
3 colleague back so he can help me.  
4 MR. DONOVAN: Yeah. He's only got a  
5 couple minutes left on that tape, so we might as well  
6 take a break now.  
7 VIDEOGRAPHER: Going off the record  
8 at 10:54 and 59 seconds a.m.  
9 (Recess)  
10 VIDEOGRAPHER: We're back on the  
11 record at 11:06 and 9 seconds a.m.  
12 BY MR. DONOVAN:  
13 Q. Do you recall the first discovery response  
14 you were involved in or had some personal involvement,  
15 the one I just discussed with those other two reference  
16 documents, you kind of got copied, but you weren't  
17 particularly involved in? Do you recall what the next  
18 discovery response was that you were involved in?  
19 A. Yes. I believe it was on the Green case.  
20 Q. Yes.  
21 A. Filing -- filed supplemental response in  
22 July. Once we obtained documents, we supplemented our  
23 prior responses with those documents.  
24 Q. Okay. Were those the documents from  
25 Rumberger Kirk?

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1 A. Correct.  
2 Q. Okay. And those were 64 documents in  
3 number? They were Bates numbers 2379 through 2442?  
4 A. That sounds right.  
5 Q. I know you probably don't remember those  
6 numbers, but I'm reading off of a letter which contains  
7 them.  
8 A. Yeah, that's right.  
9 Q. Okay. Where did you get those documents  
10 from, or did you?  
11 A. I think I received those, boy, eventually.  
12 I think I received those from our coordinator, but I  
13 can't remember. It was either coordinator or Andy  
14 Langan sent me the documents, I can't remember. I  
15 think my first awareness that there were these  
16 documents was I was copied on a letter from Rumberger's  
17 firm to Andy and copied me on it, I think. That was  
18 the first I was aware of those documents.  
19 Q. Okay. I'm looking at a letter which is  
20 privilege hearing document 216, it's Bates number 1142,  
21 and it's a letter from Robert Rudock to actually Ron  
22 Betman at Kirkland & Ellis.  
23 Do you know who Ron Betman is?  
24 A. I remember the name.  
25 Q. Okay.

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1 A. I don't know if I've ever met Ron.  
2 Q. And it references F-car center documents and  
3 it says Dear Mr. Betman: Enclosed for your review are  
4 the F-car center documents which refer to or address  
5 the development of the T-roof of the 1982 to present  
6 F-car. We have not made an evaluation as to whether  
7 the enclosed documents should have been produced in  
8 Green versus GMC. We are, of course, available to  
9 discuss productions of the enclosed documents in Green.  
10 If you have any questions or concerns, please do not  
11 hesitate to contact us, and you're copied on that  
12 without enclosures.  
13 Is that the letter you're referring  
14 to?  
15 MR. VINES: I'd like to ask the  
16 witness if he'd like to see that letter to be able to  
17 answer it. Would that help?  
18 MR. DONOVAN: I don't think I have a  
19 copy of the letter, so we have to put my computer over  
20 there or --  
21 MR. CARROLL: I believe we've got  
22 one.  
23 MR. DONOVAN: Or if you have one,  
24 that would be great.  
25 THE WITNESS: I believe that's the

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1 letter.  
2 BY MR. DONOVAN:  
3 Q. Okay. Is that the first awareness you had  
4 of there being documents reviewed by the Rumberger firm  
5 in connection with the Green case?  
6 A. Best of my recollection, yes.  
7 Q. Okay. Were you given any information with  
8 respect to what was going on in that review of  
9 documents by the Rumberger firm?  
10 Let me ask that a different way.  
11 When you -- when the files were transferred, you  
12 inherited them from Doug Brown, did he give you any  
13 kind of verbal explanation of the fact that there were  
14 documents being reviewed by Rumberger?  
15 A. Not to my recollection.  
16 Q. Okay. So this is pretty much the first time  
17 you knew about that?  
18 A. This --  
19 Q. This letter of July 8th.  
20 A. Reading this letter and then talking to Andy  
21 Langan --  
22 Q. Okay.  
23 A. -- at Kirkland & Ellis asking them pretty  
24 much what the letter consisted of, what was the  
25 background of the letter.

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1 Q. Okay. So when you got this letter, you had  
2 a conversation with Andy Langan over at Kirkland &  
3 Ellis?

4 A. Correct.

5 Q. Okay. And what was the nature of that  
6 conversation?

7 A. Just asked him what the -- why we were  
8 getting these documents, where they came from and what  
9 we were going to do with them.

10 Q. Okay. What did he say with respect to what  
11 the documents were and where they came from?

12 A. It's my understanding that -- recollection  
13 is that he told me that the documents came from  
14 Rumberger & Kirk, that they did a review and that these  
15 documents were deemed responsive to the court order.

16 Q. Okay. Did he give you any indication of  
17 where Rumberger had gotten the documents from?

18 A. Not to my recollection.

19 Q. Did he give you any indication of what the  
20 Rumberger firm had reviewed in order to cull these  
21 documents, these 64 documents?

22 A. Other than the fact that the letter itself  
23 talks about F-car project -- or F-car center documents  
24 and -- F-car center documents, I probably discussed  
25 that they were General Motors documents.

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1 Q. Okay. Do you know more specifically what  
2 documents from the F-car Project Center, if not all of  
3 the documents from the F-car Project Center that  
4 Rumberger had reviewed and from which these documents  
5 came?

6 A. No.

7 Q. So you had no role in selecting these 64  
8 documents; correct?

9 A. That's correct.

10 Q. And you had no role in determining from what  
11 larger body of documents, if there was a larger body of  
12 documents, these documents came from.

13 A. Correct.

14 Q. Did you have any understanding that they did  
15 come from a larger body of documents, that these 64  
16 were not all of the documents that Rumberger reviewed?

17 A. Well, I believe -- the fact that they were  
18 F-car center documents led me to believe, and I believe  
19 Andy confirmed that, that these were a collection of  
20 documents and that these documents -- some documents  
21 came from that collection.

22 Q. Okay. And did you have any discussion of  
23 what the criteria was going to be to evaluate whether  
24 these documents, these 64 documents were going to be  
25 produced in Green versus General Motors?

1 A. What the criteria?

2 Q. Yes.

3 A. Yeah. The court order.

4 Q. Okay. Anything specific about the court  
5 order, any particular interrogatory number, any --

6 A. Well, it was the court order and -- which  
7 caused -- yeah. It was a response to paragraph 5 of  
8 the court order, the order to -- T-top design  
9 documents.

10 Q. Okay. Were you aware whether there was any  
11 specific number in that paragraph?

12 A. Not in paragraph 5 it doesn't look like, but  
13 in paragraph 4 and 3 we're talking about General Motors  
14 is to provide more specific responses to certain  
15 interrogatories and certain requests for production of  
16 documents.

17 Q. Okay. Did you ever --

18 I know you didn't get them with that  
19 letter. Did you ever get them subsequently, the actual  
20 64 documents which were referenced in that letter?

21 A. Did I ever receive them? I don't believe I  
22 did. I think I saw them, though. I believe it was at  
23 the -- with the discovery coordinator at that time.

24 Q. Okay.

25 A. They were in her possession.

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1 Q. Do you --

2 A. And I looked at them, if I remember  
3 correctly, I think.

4 Q. Was that pretty much your involvement in  
5 supplementing the interrogatories with those 64  
6 documents?

7 A. From a discovery standpoint?

8 Q. Yes. At that point in time. I'm not  
9 looking to go any further than that.

10 A. Yeah, in the fact that these 64 documents  
11 once provided to plaintiff's counsel satisfied -- was  
12 my understanding it satisfied the court order.

13 Q. In whose opinion was that?

14 A. I believe that was Mr. Langan's opinion.

15 Q. It wasn't the Court's opinion necessarily.  
16 This was something --

17 A. Well, I didn't hear anything from the Court  
18 to say it didn't, so I'm assuming -- I'm assuming it  
19 did. That's kind of a guess.

20 Q. Okay. Where might these documents that  
21 Rumberger reviewed have come from? I mean, if you were  
22 to say -- if you were to be providing documents in an  
23 F-car case, is there one repository where all of those  
24 documents are or multiple repositories where they might  
25 be?

20 (Pages 74 to 77)

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<p>1 A. Well, the letter indicated and it was my</p> <p>2 understanding that the documents that Rumberger looked</p> <p>3 at came from the F-car center documents, which is what</p> <p>4 it says in this letter, F-car center documents.</p> <p>5 So to answer your question, where</p> <p>6 the documents came that Rumberger reviewed, seems to be</p> <p>7 answered by this letter that they were F-car center</p> <p>8 documents.</p> <p>9 Q. Okay. Other than documents which come from</p> <p>10 the F -- well, strike that.</p> <p>11 Do all the documents -- are all of</p> <p>12 the documents with respect to the F-car contained in</p> <p>13 the F-car Project Center?</p> <p>14 A. I don't believe so.</p> <p>15 Q. Okay. What documents are contained in the</p> <p>16 F-car Project Center?</p> <p>17 A. Meeting minutes, probably design -- design</p> <p>18 material, design drawings. No. I don't know about the</p> <p>19 drawings.</p> <p>20 I believe pretty much the design --</p> <p>21 the Project Center brought in all the groups to work on</p> <p>22 and develop the vehicle, the F-car, under one umbrella,</p> <p>23 so to speak. So the documents, the meeting minutes,</p> <p>24 test reports, things of that nature would have been in</p> <p>25 the F-car center project files.</p>	<p>1 A. Correct. Correct.</p> <p>2 Q. And some do and some don't.</p> <p>3 A. Correct.</p> <p>4 Q. Okay. Again, was there -- other than an</p> <p>5 engineer telling you about that, was there any way --</p> <p>6 any other way you could find -- or coincidentally because</p> <p>7 someone sent you a letter referencing it, is there any</p> <p>8 way you could have found out? Is there a list of what</p> <p>9 cars that had project center or --</p> <p>10 A. Well, I don't --</p> <p>11 In the context of this case,</p> <p>12 discovery was over, or I thought it was over, so there</p> <p>13 was -- I don't know if this answers your question, but</p> <p>14 it -- and if it doesn't, please let me know, but it</p> <p>15 just seemed like when this flag -- red flag went up</p> <p>16 about more documents, documents retrieved from F-car</p> <p>17 center document files, that was -- that I had asked</p> <p>18 questions as to what that was all -- you know, what</p> <p>19 that was all about, and to answer your question, I</p> <p>20 think, is, yes, I became aware of the F-car center</p> <p>21 documents at that time.</p> <p>22 Q. Did you make any request to review the F-car</p> <p>23 Project Center documents?</p> <p>24 A. No.</p> <p>25 Q. Did you make any request to be provided with</p>
Page 75	Page 77
<p>1 Q. Okay. When did you first become aware that</p> <p>2 the F-car Project Center was a repository for at least</p> <p>3 some of the documents having to do with the design and</p> <p>4 manufacture of the F-car?</p> <p>5 A. Probably in July of 1991.</p> <p>6 Q. Contemporaneously with that letter?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. None of the engineers had discussed</p> <p>9 with you prior to your receipt of that letter that</p> <p>10 there was an F-car Project Center file which contained</p> <p>11 documents with respect to the F-car development,</p> <p>12 design, and manufacture?</p> <p>13 A. No, I don't think F-car. Maybe W-car, but</p> <p>14 not -- I think there was a Project Center on -- or</p> <p>15 N-car. It was another vehicle.</p> <p>16 There were only a couple Project</p> <p>17 Center file -- project centers dealing with vehicles,</p> <p>18 one was the F-car and one, I think, was the NL -- I</p> <p>19 can't remember the other initial, but they were -- I</p> <p>20 believe that was a project center. So I was aware of</p> <p>21 project centers. Your question about the F-car, this</p> <p>22 may have been the first time that I focused on the</p> <p>23 F-car Project Center.</p> <p>24 Q. Okay. So not every car which General Motors</p> <p>25 manufactures has a project center associated with it.</p>	<p>1 an index or a summary of what kind of documents were</p> <p>2 contained in there?</p> <p>3 A. No.</p> <p>4 Q. Now, you had other F-car cases pending at</p> <p>5 this time, didn't you?</p> <p>6 A. At that time?</p> <p>7 Bishop had been tried. This one</p> <p>8 was -- in '91 was active. By July I think we had tried</p> <p>9 the Cox case. I don't know of any cases pending at</p> <p>10 that time.</p> <p>11 Q. Okay. In future cases after this July '91</p> <p>12 letter was the F-car Project Center file somewhere</p> <p>13 where you would go to look for document responses if it</p> <p>14 was an F-car?</p> <p>15 A. Yes.</p> <p>16 Q. But obviously before that, since you didn't</p> <p>17 know about it, you couldn't make a request that you</p> <p>18 look there.</p> <p>19 A. Me personally?</p> <p>20 Q. Yes.</p> <p>21 A. No. That was already done by Doug Brown and</p> <p>22 the engineers and this was already set up before I took</p> <p>23 over. So the answer is I didn't, but people who were</p> <p>24 very experienced and well versed in F-car project files</p> <p>25 did take a look at them.</p>

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1 Q. So it was your understanding that before you  
2 became engaged in this case in November of 1990 that  
3 there had been a search conducted of the F-car Project  
4 Center files so as to see if there was anything in  
5 there responsive to the discovery demands or the order  
6 of Judge Ferentz; true?

7 A. No.

8 Q. All right. Correct that for me.

9 MR. VINES: I'm sorry. Would you  
10 say that again? I didn't quite follow it myself.

11 MR. DONOVAN: Sure.

12 BY MR. DONOVAN:

13 Q. Was it your understanding when you took over  
14 this file in November of 1990 from Doug Brown that  
15 there had already been a search of the F-car Project  
16 Center files and any documents which were responsive to  
17 the discovery demands and the order of Judge Ferentz  
18 had already been provided to plaintiff?

19 A. No, that's not what I'm saying.

20 Q. Okay. What's wrong about what I said?

21 A. When I took over the file in late November,  
22 early December of 1990, it was my understanding that  
23 discovery was complete.

24 Q. Okay.

25 A. And it was my understanding that our

1 Q. Tell me what else, if anything, you did to  
2 familiarize yourself with what was in the F-car Project  
3 Center file and -- just that for now. Tell me what you  
4 did, if anything, to familiarize yourself.

5 A. After I found out about --

6 Q. Yes.

7 A. -- the F-car.

8 Q. Um-hum.

9 A. Or specifically the July 8th, 1991, where it  
10 was brought to my attention that --

11 Q. Yes.

12 A. -- there were F-car --

13 I talked to the engineer.

14 Q. Okay.

15 A. I believe it was Joe Rice, and I asked  
16 around the office about the project files and it was  
17 explained to me that -- a little bit more completely  
18 than my understanding of the project -- the F-car  
19 Project Center or Project Center files were all about.  
20 So I looked into the issue and I tried to educate  
21 myself about the Project Center files.

22 Q. Okay. Were you aware that there was -- at  
23 any point in time after you got that letter that there  
24 was an index to the Project Center files on microfiche?

25 A. Sometime --

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1 obligation was met and the court order was satisfied.  
2 It wasn't until July of '91 that it was -- became  
3 apparent that we didn't review all the documents, and  
4 that was -- it was after I took over the file that the  
5 F-car center documents were reviewed and the 64  
6 documents were produced in response to the court order.

7 Q. Okay. I understand.

8 Do you know --

9 So it was your understanding that  
10 this search of the F-car Project Center was the first  
11 search being conducted to provide responsive documents  
12 from the F-car Project Center in Green?

13 A. I have no knowledge.

14 Q. Okay.

15 A. All I know is that 64 more documents -- 64  
16 documents were found. I don't know if there was an  
17 earlier search. All I know is in July of 1991 64  
18 documents -- I was made aware of 64 documents that may  
19 have been responsive, and it was my position as staff  
20 attorney to turn all those documents over to plaintiff.

21 Q. Okay. Were you aware these documents had  
22 come from about 10,000 documents which had been  
23 reviewed by a paralegal at the Rumberger firm?

24 A. I wasn't aware at that time as to the number  
25 of documents that were being -- that were reviewed.

1 Before this?

2 Q. No, after that.

3 A. Oh, yeah. After, yes.

4 Q. Did you ever review that?

5 A. No. That was -- it wasn't immediately  
6 after. It was years after.

7 Q. Oh, years after. Okay.

8 A. Yeah. Best of my recollection.

9 About the index?

10 Q. Yes.

11 A. Yes.

12 Q. After Green was finished?

13 A. I can't answer that.

14 Q. So --

15 A. It may have been --

16 Well, Green didn't get finished  
17 until 199 --

18 Q. I think 1998.

19 A. 8?

20 So I've got to -- I got to believe  
21 that I looked at that index before Green was  
22 finished --

23 Q. Okay.

24 A. -- in 1998.

25 Q. And did you do that with the intent of

22 (Pages 82 to 85)

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<p>1 cross-referencing what had been provided in Green with</p> <p>2 what was on that index to make sure that there wasn't</p> <p>3 anything else other than the 64 documents?</p> <p>4 A. No.</p> <p>5 Q. Did you ask anybody else to do that?</p> <p>6 A. No.</p> <p>7 Q. Was it your assumption that that's what</p> <p>8 Rumberger had done?</p> <p>9 A. No. We're talking about a timeframe that --</p> <p>10 the trial was over.</p> <p>11 Q. The first trial.</p> <p>12 A. Both.</p> <p>13 Q. Both trials.</p> <p>14 A. So it was after the fact.</p> <p>15 Q. Oh, okay. Okay.</p> <p>16 A. So it was -- the Rumberger/GM relationship</p> <p>17 about F-car project files I think was -- was -- had</p> <p>18 already ceased to exist.</p> <p>19 Q. Okay. Let me ask that a different way.</p> <p>20 When you found out there was an F --</p> <p>21 When you fortuitously found out that</p> <p>22 there was an F-car Project Center file because you were</p> <p>23 copied on this letter, did you do anything to review</p> <p>24 the F-car Project Center or any summary of what was in</p> <p>25 there or any indexes to cross-reference whether there</p>	<p>1 that they have experience, training, engineers,</p> <p>2 engineer, discovery coordinator, outside counsel.</p> <p>3 Everyone has the -- chips in on this situation, but in</p> <p>4 this specific case the assurance came from our trial</p> <p>5 counsel, Andy Langan, who I believe at that time had</p> <p>6 discussed this production with Rumberger &amp; Kirk firm</p> <p>7 and the assurance that we have satisfied the court</p> <p>8 order.</p> <p>9 Q. Did you ever speak to anybody from the</p> <p>10 Rumberger firm about this assignment?</p> <p>11 A. No.</p> <p>12 Q. Okay. Were you aware of what the assignment</p> <p>13 was to Rumberger, what they were supposed to look for</p> <p>14 in the documents they were provided?</p> <p>15 A. Yes. In July, August of 1991, yes.</p> <p>16 Q. Okay. What was -- what were they looking</p> <p>17 for in the documents?</p> <p>18 A. Specifically response to the court order and</p> <p>19 also I believe put together a roof -- the documents</p> <p>20 involving the development of the F-car roof.</p> <p>21 Q. Okay.</p> <p>22 A. Kind of multitasking to -- specifically for</p> <p>23 this case and more general, and I don't know if it was</p> <p>24 for a specific case, but more general kind of the</p> <p>25 history of the F-car roof.</p>
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<p>1 was anything else other than the 64 documents which</p> <p>2 Rumberger's firm provided that may have been responsive</p> <p>3 to any discovery demands?</p> <p>4 MR. VINES: I'll object. You used</p> <p>5 the term fortuitous in your question, but go ahead.</p> <p>6 THE WITNESS: No.</p> <p>7 BY MR. DONOVAN:</p> <p>8 Q. Okay. Did you instruct anybody else to do</p> <p>9 anything with respect to review of the F-car Project</p> <p>10 Center file, any indexes, summaries or listing of</p> <p>11 documents in there to determine whether there was</p> <p>12 anything else responsive to discovery demands in Green?</p> <p>13 A. No, because I believe that the review was</p> <p>14 complete. As I learned in July of 1991 that the</p> <p>15 project files were reviewed by -- were in the</p> <p>16 possession of and reviewed by the Rumberger firm, that</p> <p>17 there was direction to them as to what to look for,</p> <p>18 that they were a very responsible law firm, and that</p> <p>19 once these documents were turned over and I was assured</p> <p>20 that the -- this discovery met and satisfied the court</p> <p>21 order, at least parts of it, I was satisfied that the</p> <p>22 people that we rely on did their work and I was</p> <p>23 satisfied that our obligation was met.</p> <p>24 Q. Okay. Where did those assurances come from?</p> <p>25 A. Working with these people. The assurance</p>	<p>1 Q. Was Hassan a case that you were working on?</p> <p>2 A. Not that I remember.</p> <p>3 Q. All right.</p> <p>4 A. I don't think it was.</p> <p>5 Q. Do you know whether anybody at the Rumberger</p> <p>6 firm was provided with either a copy of Judge Ferentz's</p> <p>7 order or the discovery demands in Green so it was to be</p> <p>8 able to comply with the directive you just indicated?</p> <p>9 A. I don't know.</p> <p>10 Q. Would you think that would have been a good</p> <p>11 idea if they were going to try to pick out all the</p> <p>12 documents to respond to the court order and to respond</p> <p>13 to the discovery demands that they be provided with</p> <p>14 that or some kind of summary of it?</p> <p>15 A. Or communication somehow either over the</p> <p>16 phone -- like you're reading to me documents. I assume</p> <p>17 they could read, you know, questions over the phone and</p> <p>18 people take notes.</p> <p>19 Q. And you would assume that happened at some</p> <p>20 point.</p> <p>21 A. I -- yes, I guess, but I have no knowledge</p> <p>22 whether it did or didn't.</p> <p>23 Q. Now, I think you told me that the F-car</p> <p>24 Project Center was one repository of documents</p> <p>25 pertaining to the F-car.</p>

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1 Was it all of the documents within  
2 the total lifespan of the F-car? Was it started when  
3 the F-car first was put into production or starting to  
4 designing or was it just any period of time?

5 A. I don't remember. I'm not sure if it was --  
6 it started with first generation and ceased to exist  
7 after the third generation. I don't have an -- I don't  
8 have a recollection as to when the F-car Project Center  
9 started. I think it ceased to exist after the -- after  
10 the third generation, which was, I think, ended in  
11 1992, if I'm not mistaken.

12 Q. Where was -- where were these files actually  
13 maintained?

14 A. I believe they were in the Fisher Body  
15 building basement.

16 Q. And do you know what format they were in?

17 A. I think they were in microfiche.

18 Q. Okay. Do you know whether all of the  
19 documents of the F-car Project Center file were in  
20 microfiche?

21 A. I have no idea.

22 Q. Did you ever physically go and even if not  
23 related to a case, just happened to be there and  
24 actually see the files or the boxes containing the  
25 files or however they were kept?

1 Q. Okay. And do you know what method that they  
2 use now to review it? Is it on computer or is it still  
3 on microfiche?

4 A. I have -- I don't know.

5 MR. VINES: I'm going to object to  
6 that.

7 BY MR. DONOVAN:

8 Q. Other than the F-car Project Center file  
9 where else would we find documents related to the  
10 design or manufacture of F-cars?

11 A. At the Milford Proving Ground.

12 Q. Okay. What would we find there?

13 A. Crash tests, sled tests, handling and  
14 stability tests.

15 Q. Alien?

16 A. Handling and --

17 Q. Oh, handling. I thought you said alien.

18 A. Handling and stability tests at the  
19 engineering center, probably at the tech center.

20 Q. Where is that?

21 A. In Warren, Michigan.

22 Q. What kind of documents would we find there?

23 A. Engineers' notes perhaps and drawings. I'm  
24 not sure where the drawings would be housed now, or  
25 were housed then. Any treatise on the F-car, any

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1 A. No. I think I was there once and saw the  
2 project files.

3 Q. Okay. And what did you see? Were they  
4 boxes? Were they --

5 A. No. I think they were -- I think they were  
6 in file drawers. I can't remember.

7 Q. Do you know whether the documents were ever  
8 scanned and put on computer?

9 A. I don't know.

10 Q. Do you know whether the files still exist in  
11 the basement of the Fisher Body division?

12 A. Well, there's no Fisher Body division  
13 anymore.

14 Q. Okay. Do you know where the --

15 A. Where they're located, I'm not real -- I'm  
16 not sure.

17 Q. Does you still have people review the F-car  
18 Project Center file if you have a case --

19 A. Yes.

20 Q. -- with an F-car?

21 Okay. So, obviously, somebody knows  
22 where they are.

23 A. Somebody. Right. Exactly.

24 Q. Somebody knows where they are.

25 A. Yes.

1 scientific reports in writing would have been in the GM  
2 library, research library. That's all that comes to  
3 mind at this time.

4 Q. Okay. So if we went to all of those places  
5 and did a conscientious search for any document  
6 pertaining to the F-car Project Center file, would we  
7 have exhausted, at least to anybody's knowledge, all of  
8 the searching places for those documents?

9 A. Then.

10 Q. Yes.

11 A. Back in 1989 --

12 Q. Yes.

13 A. -- 1990. I would assume so.

14 Q. I'm not talking about some engineer who may  
15 have had his personal file in a drawer somewhere, but  
16 I'm talking about all the -- the official sources for  
17 information would have been in one of -- any one of  
18 those one, two, three, four places that you gave me.

19 A. When I talk about the engineers at the tech  
20 center, I guess I am kind of talking about their  
21 material maybe in a file drawer or something, but  
22 specifically the F-car center documents were kind of  
23 the core documents about the development of the F-car.

24 Q. Okay. Now, was it your understanding that  
25 in order to comply with plaintiff's discovery requests



24 (Pages 90 to 93)

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<p>1 in Green and Judge Ferentz's order, that there had been</p> <p>2 a search conducted of the Milford Proving Grounds so as</p> <p>3 to identify and produce crash tests, sled tests, and</p> <p>4 handling and stability tests?</p> <p>5 A. That's my understanding. Right.</p> <p>6 Q. Okay. And that would be something, if you</p> <p>7 had handled the case from the beginning, you would</p> <p>8 have -- you would have instructed to be done or would</p> <p>9 have made sure was done?</p> <p>10 A. Right. I had enough experience at that time</p> <p>11 to -- and I'm sure the engineer had a lot more</p> <p>12 experience than I did to direct those kind of searches</p> <p>13 and reviews of documents and document center files.</p> <p>14 Q. Okay. And the engineer we would have been</p> <p>15 talking about would have been Dr. Rice in the Green</p> <p>16 case?</p> <p>17 A. I believe so. Correct.</p> <p>18 Q. And was it your understanding that there had</p> <p>19 been a search conducted of the engineering center in</p> <p>20 Warren so as to produce any engineering notes or</p> <p>21 drawings which may have been responsible for discovery</p> <p>22 requests in the order of Judge Ferentz?</p> <p>23 A. I believe so.</p> <p>24 Q. Okay. And you would have expected that to</p> <p>25 be done. Again, had you been handling this case from</p>	<p>1 Q. And it was your understanding that that had</p> <p>2 been done in Green?</p> <p>3 A. It's my understanding the discovery was</p> <p>4 satisfied.</p> <p>5 Q. And that is something that had there been a</p> <p>6 question in those interrogatories or demand to produce</p> <p>7 which was propounded requesting scientific literature,</p> <p>8 you would have expected that search to be conducted.</p> <p>9 A. Correct.</p> <p>10 Q. Now, again, you would not physically have</p> <p>11 done that search, but you would have relied upon</p> <p>12 someone, either a discovery coordinator, to instruct</p> <p>13 someone else to do it or you would have expected the</p> <p>14 engineer to do that.</p> <p>15 A. Correct.</p> <p>16 Q. All right. And when they reported back to</p> <p>17 you and said here's the stuff responsive to this, you</p> <p>18 would rely upon the fact that they had done a diligent</p> <p>19 and comprehensive search so as to respond to whatever</p> <p>20 discovery demand there was.</p> <p>21 A. Correct.</p> <p>22 Q. Are you familiar with the writer files and</p> <p>23 the subject files as it pertains to the F-car Project</p> <p>24 Center file?</p> <p>25 A. No.</p>
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<p>1 the beginning, that would be something you would have</p> <p>2 looked for or instructed somebody to do?</p> <p>3 A. If asked. See, you're --</p> <p>4 If requested by the discovery that</p> <p>5 was put forward to General Motors. Whether those type</p> <p>6 of --</p> <p>7 We would have responded to the</p> <p>8 discovery that was asked. You're asking two -- apples</p> <p>9 and oranges here. Where do we think documents would</p> <p>10 be?</p> <p>11 Q. Um-hum.</p> <p>12 A. And I'm ballparking where I think maybe</p> <p>13 documents would have been other than the F-car center.</p> <p>14 Now you're asking me would we have produced those</p> <p>15 documents. We would have produced those documents if</p> <p>16 they were asked for.</p> <p>17 Q. Okay. That's fair enough. That's fair</p> <p>18 enough.</p> <p>19 And you would have also expected,</p> <p>20 had they been asked for if there was a question</p> <p>21 pertaining to scientific documents, research documents,</p> <p>22 publications concerning the F-car, that there would</p> <p>23 have been a search conducted of the research library of</p> <p>24 General Motors so as to provide that information.</p> <p>25 A. Library search. Correct.</p>	<p>1 Q. You've never heard those two terms?</p> <p>2 A. Writer file?</p> <p>3 Q. Writer, w-r-i-t-e-r, files.</p> <p>4 A. Or subject files.</p> <p>5 Q. Or subject files or subject matter files.</p> <p>6 A. No, it doesn't ring a bell.</p> <p>7 Q. All right. Would it refresh your</p> <p>8 recollection if I told you that these were subdivisions</p> <p>9 within the F-car Project Center file, the documents</p> <p>10 were either part of the writer files or the subject</p> <p>11 files or they might have been part of both?</p> <p>12 A. Would the writer files be the meeting</p> <p>13 minutes?</p> <p>14 Q. I don't know.</p> <p>15 A. Well, I can't answer your question.</p> <p>16 Q. Okay. Were you familiar with UPC codes with</p> <p>17 reference to the F-car Project Center file or the use</p> <p>18 of UPC codes?</p> <p>19 A. Right.</p> <p>20 Q. And what was the -- what was the UPC codes</p> <p>21 and what did they have to do with the Project Center</p> <p>22 file?</p> <p>23 A. I believe, if I remember correctly, the</p> <p>24 vehicle and the parts in the vehicle, components of the</p> <p>25 vehicle were coded under the UPC code, and those were a</p>

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1 way of searching the Project Center file for documents  
2 related to that UPC code.

3 Q. Okay. Was there a UPC code for component  
4 parts of the roof?

5 A. I can't remember.

6 Q. Okay. So it was a tool one could utilize to  
7 search the F-car Project Center file so as to identify  
8 certain documents pertaining to whatever part we  
9 were talking about.

10 A. Part. Exactly.

11 Q. Okay.

12 A. Part we're looking for.

13 Q. So if there was a UPC code for the roof  
14 hatches, the glass roof hatches, okay, we could  
15 actually go and that would provide us with a way to  
16 look for documents pertaining to that?

17 A. If there -- yes. If there was. I don't  
18 know if --

19 Q. Okay.

20 A. But if there was, yes, you -- right.

21 Q. Okay. Do you know whether anybody in  
22 providing the discovery prior to you're taking over the  
23 case in November of 1990 did a UPC code search of the  
24 F-car Project Center index to determine whether there  
25 were any documents there responsive to the discovery

1 Q. With other project centers?

2 A. No. With other vehicle component parts and  
3 allegations, defect allegations.

4 Q. Okay. So getting back to my question. Is  
5 this something you would expect someone to do in order  
6 to find documents responsive to discovery demands in  
7 Green or not?

8 A. I don't think I can answer the question as  
9 you've asked it.

10 Q. It's something that could have been done,  
11 though.

12 A. Well, you told me not to -- early on you  
13 told me not to --

14 Q. Not to guess?

15 A. -- guess.

16 Q. All right.

17 A. So I'm not going to guess.

18 Q. After Green versus General Motors were  
19 documents from the F-car Project Center file provided  
20 in other F-car cases and specifically in roof cases?

21 A. Yes.

22 Oh. Specifically?

23 Q. Yes.

24 A. I know documents were provided in other  
25 F-car cases.

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1 demands or the order of Judge Ferentz?

2 A. I do not.

3 Q. Would you expect somebody to have done that?

4 A. The U --

5 Look at the UPC code on the  
6 hardcopies that Rumberger had.

7 Q. No. I'm talking about -- I'm not talking  
8 about who would do it, I'm just talking, would you  
9 expect that kind of search to be done?

10 A. Well, I don't know if it could be done if it  
11 wasn't on the microfiche.

12 Q. Okay. But I'm not -- I'm losing you.

13 A. Well, I thought --

14 I don't know if you could do a UPC  
15 code check if it was just hardcopy. This is paper.  
16 So, I mean, I suppose you can and I suppose there was a  
17 UPC code on the paper, but I don't understand the  
18 benefit of doing a UPC code when you have a hardcopy.

19 Q. Wouldn't utilizing the UPC code direct you  
20 to a section of the F-car Project Center file for the  
21 purpose of --

22 A. It may have.

23 Q. Okay. Have you ever used the UPC codes to  
24 engage in that kind of a process?

25 A. Not with the F-car center.

1 Q. Such as the Harris case?

2 A. Yes.

3 Q. Are you familiar with the Johnson case out  
4 of Tennessee?

5 A. It was a -- vaguely. It was a glass case.

6 Q. Was that a case you handled?

7 A. No.

8 Q. Do you know who Pat Artis is?

9 A. A plaintiff's lawyer.

10 Q. Okay. Have you ever handled any cases in  
11 which Mr. Artis was the plaintiff's attorney?

12 A. Yes, I have.

13 Q. Okay. Rollover cases?

14 A. Yes.

15 Q. F-car cases?

16 A. Not to my recollection.

17 Q. Are you familiar with the case Saturday  
18 versus General Motors?

19 A. Saturday. No.

20 Q. Okay. Do you have any --

21 Did you have any involvement in any  
22 search of General Motors' databases by Mr. Artis or any  
23 of his representatives for documents contained in the  
24 F-car Project Center file?

25 A. Did I personally?

26 (Pages 98 to 101)

Page 98	Page 100
<p>1 Q. Yes.</p> <p>2 A. No.</p> <p>3 Q. Were you aware of such an event taking</p> <p>4 place?</p> <p>5 A. Yes.</p> <p>6 Q. And do you know when that was?</p> <p>7 A. That was 1997, 6.</p> <p>8 Q. And what was your understanding about what</p> <p>9 occurred?</p> <p>10 A. That review of the F-car project files was</p> <p>11 made by General Motors in the presence of a</p> <p>12 representative or Mr. Artis himself, I'm not sure who,</p> <p>13 looking for documents responsive to a request made in</p> <p>14 the Johnson case.</p> <p>15 Q. And was that conducted in Warren?</p> <p>16 A. I have no idea.</p> <p>17 Q. And do you know whether that search was</p> <p>18 conducted utilizing computers or was that a manual</p> <p>19 search through documents or a review of microfiche?</p> <p>20 A. I think it was just through the microfiche</p> <p>21 review, microfiche reader.</p> <p>22 Q. Did Mr. Brown at all speak with you or give</p> <p>23 you any direction or guidance with respect to what</p> <p>24 occurred at an August 8th meeting, August 8th, 1990</p> <p>25 meeting, discovery meeting?</p>	<p>1 Q. Do you know for certain or did you just say</p> <p>2 that, that the documents Rumberger got, the \$10,000</p> <p>3 were -- \$10,000 -- the 10,000 documents were roof</p> <p>4 documents?</p> <p>5 A. I heard you say that earlier I thought, so</p> <p>6 that's why I --</p> <p>7 Q. Okay.</p> <p>8 A. I'm sorry if I'm wrong. I just repeated</p> <p>9 what you mentioned earlier.</p> <p>10 Q. If I said it, then I was wrong, too.</p> <p>11 A. Well, I would assume they were documents</p> <p>12 dealing with roof and structure, and I say that based</p> <p>13 on -- based on what you've said and what I'm led to</p> <p>14 believe.</p> <p>15 Q. Are you familiar with the concept of</p> <p>16 alternative design as part of plaintiff's proofs in a</p> <p>17 product liability crashworthiness case?</p> <p>18 A. I've -- yes. I'm familiar with that.</p> <p>19 Q. Tell me your understanding of what that</p> <p>20 means and what the requirements of that are.</p> <p>21 MR. VINES: I'm going to object to</p> <p>22 that to the extent that it goes to cases outside of the</p> <p>23 group that we are focused on here because that could</p> <p>24 get into trial strategy in other cases and --</p> <p>25 MR. DONOVAN: I'll rephrase it so we</p>
Page 99	Page 101
<p>1 A. No. I have no recollection of that.</p> <p>2 Q. Do you know that there was a meeting which</p> <p>3 took place in which the attorneys and the engineers all</p> <p>4 got involved in order to discuss and review Judge</p> <p>5 Ferentz's order and what was required of General Motors</p> <p>6 to comply with it?</p> <p>7 A. Yes, now retroactively, yes.</p> <p>8 Q. Okay. You didn't know that at the time you</p> <p>9 took over the file or --</p> <p>10 A. No.</p> <p>11 Q. -- thereafter?</p> <p>12 A. No.</p> <p>13 Q. I may have asked you this, but just to</p> <p>14 clarify. Is it your understanding that the F-car</p> <p>15 Project Center file had documents both -- with respect</p> <p>16 to both the first generation, second generation, third</p> <p>17 generation F-car?</p> <p>18 A. I don't know. I have no idea.</p> <p>19 Q. Do you know approximately how many documents</p> <p>20 are contained within the F-car Project Center file?</p> <p>21 A. I assume it's thousands. If we -- you</p> <p>22 mentioned we produced to Rumberger firm 10,000 and if</p> <p>23 that had to do with roof and roof structure, I mean,</p> <p>24 there's other components to the vehicle, so I would</p> <p>25 assume it had to be thousands.</p>	<p>1 don't have to go there.</p> <p>2 MR. VINES: Okay.</p> <p>3 THE WITNESS: Can I take a break?</p> <p>4 MR. DONOVAN: Sure.</p> <p>5 THE WITNESS: Thanks.</p> <p>6 VIDEOGRAPHER: Going off the record</p> <p>7 at 11:53 and 30 seconds a.m.</p> <p>8 (Recess)</p> <p>9 VIDEOGRAPHER: We're back on the</p> <p>10 record at 12:02 and 36 seconds p.m.</p> <p>11 BY MR. DONOVAN:</p> <p>12 Q. When we took the break, we were talking</p> <p>13 about alternative design and there was an objection</p> <p>14 posed by Mr. Vines and I'm going to try to rephrase</p> <p>15 that question.</p> <p>16 You're familiar with alternative</p> <p>17 design being part of plaintiff's proofs in a product</p> <p>18 liability case?</p> <p>19 A. Some instances, yes.</p> <p>20 Q. Okay. One of the requirements in Green in</p> <p>21 New Jersey was that an alternative design be advanced;</p> <p>22 correct? Did you know that?</p> <p>23 A. I believe so. Yes.</p> <p>24 Q. Okay. Did you do anything specific to</p> <p>25 assure that any requests pertaining to alternative</p>

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1 designs were complied with?

2 A. On -- are we talking about the case itself,  
3 I mean, trial one and trial two or just in general?

4 Q. At any time.

5 A. That -- yes, that the -- there was an issue  
6 on alternative design and the first trial with -- I  
7 believe we looked at the T-top and the fasteners to  
8 hold the T-top in place, so yes. I remember focusing  
9 somewhat on the latching mechanism of the T-top.

10 Q. Okay.

11 A. Because I think the allegation was that the  
12 T-top fell down and hit Mr. Green on the head.

13 Q. Okay. Anything else other than looking for  
14 documents pertaining to the latching mechanism, having  
15 to do with the latching mechanism?

16 A. Well, I think that was the main allegation  
17 in that first case. That's the best of my recollection  
18 what we looked at or what I looked at.

19 Q. Now, right before the Green II trial in  
20 January of 1996 there was a rather large production of  
21 documents where you -- do you remember that?  
22 Documents, crash videos, photographs.

23 A. Oh, crash -- the crash -- yes. The crash --

24 Q. Sled tests.

25 A. Yes. Correct.

1 new documents that were being sent or new crash tests  
2 or videos or photographs?

3 A. I have no recollection.

4 Q. Okay. Do you recall anything about how this  
5 influx of 5,000 new documents became -- developed?

6 A. What the request was?

7 Q. Yeah. Do you know --

8 A. No. I don't remember.

9 Q. Okay. Do you recall --

10 If I refresh your recollection by  
11 telling you that you served amended experts' reports  
12 the week before trial which then refer to additional  
13 testing, does that refresh your recollection?

14 A. No.

15 Q. Okay. Do you --

16 A. No. All I remember was that you amended --  
17 plaintiff amended their claim on -- defect claim and we  
18 amended a response to that. I think there was some  
19 issue that we amended our defense, and I think those  
20 were the tests that were responsive to our defense of  
21 the case that were being relied upon by our experts, if  
22 I'm not mistaken.

23 Q. Do you recall Judge Fuentes entering an  
24 order in January of 1996 requiring General Motors to  
25 produce all of the crash testing and documents which

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1 Q. All right.

2 A. I do remember that.

3 Q. Were you involved in that process?

4 A. The response to that, yes.

5 Q. Okay.

6 A. As the engineer was and counsel and the  
7 whole team.

8 Q. Do you know why those doc -- all of those  
9 crash tests and sled tests and all the stuff that was  
10 produced then had not been produced previous to the  
11 start of the second trial and, in fact, was produced  
12 two days before it was scheduled to begin?

13 A. The second trial?

14 Q. Yes.

15 A. No.

16 MR. VINES: I'll object to that  
17 because I don't think we've established in the  
18 deposition that they hadn't been produced earlier.

19 MR. DONOVAN: Well, up to that point  
20 I only received 1,000 documents and then right before  
21 the trial I received 5,000 documents. I don't know  
22 what other assumption you can make.

23 MR. VINES: Okay. Go ahead.

24 BY MR. DONOVAN:

25 Q. Was it your understanding that these were

1 General Motors' experts had relied upon and mentioned  
2 in the reports which were served right before Green II?

3 A. Vaguely. Yeah. I don't remember the  
4 specifics, particularly the timeline issue. I'm not  
5 sure exactly when material was produced.

6 Q. I'm going to represent to you -- and if I --  
7 again, if I had copies of these documents, I would  
8 certainly give them to you to look at, and if you need  
9 them, we'll have to figure out a way to do that, but --

10 MR. VINES: If you ask him about  
11 whether he knows about a document, that's one thing.  
12 If you want him to respond to the content, we're going  
13 to need to get out copies somehow.

14 MR. DONOVAN: Okay. Let me just do  
15 it this way first and then we'll see how that works.

16 BY MR. DONOVAN:

17 Q. Privilege document 291, which is a January  
18 19th, 1996 letter from a woman by the name of Smoly.  
19 Do know who that is, Martha Smoly?

20 A. Martha Smoly, yes.

21 Q. She was a discovery coordinator?

22 A. Discovery coordinator of General Motors.

23 Q. Okay. She forwards for service in Green 46  
24 documents pursuant to Judge Fuentes's order. In  
25 document number 292, again, Miss Smoly provides 300 --

28 (Pages 106 to 109).

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<p>1 3,016 documents represented to be the 82 through 86 2 F-car crash tests. In document 295 on January 22nd, 3 1996 she forwards an additional 143 documents. On -- 4 in document 296, January 22nd, 1996, four more 5 documents consisting of crash and sled tests are 6 forwarded. In document 297 on January 23rd, 1996, 7 three different sets of documents are sent in groups of 8 five documents, 425 documents, and 368 documents. That 9 was the enumerated response right before Green II as 10 contained in the privilege hearing. 11 Do you know where any of those 12 documents came from? 13 A. You mean where they're housed? 14 Q. Yeah, and my next question -- 15 A. I believe the Milford Proving Ground. 16 Q. Okay. These all came from the Milford 17 Proving Ground? 18 A. I can't say all of them because I don't have 19 them in front of me, but from what you read, you're 20 referencing crash and sled tests, the videos, those are 21 housed at the Milford Proving Ground. 22 Q. Okay. Do you know why those documents had 23 not been produced earlier in response to discovery 24 demands? 25 A. I don't know if they haven't been.</p>	<p>1 and how did you put it -- requesting the documents, not 2 actually culling them out of a repository. So my 3 involvement was putting it in motion to request these 4 documents. 5 Q. And of whom did you make that request? 6 A. I believe it was Martha Smoly. 7 Q. Okay. And -- 8 A. After discussion with outside counsel, trial 9 counsel involved in the case and Mr. -- both Mr. Tansey 10 and Mr. Langan, we made the request. 11 Q. Okay. And what was it that you were looking 12 for or what was it you were responding to? 13 A. I believe it was the Court telling us to 14 produce some documents that our engineers mentioned or 15 relied on in their expert reports, I believe. I don't 16 think there -- expert reports, I think. 17 Q. Okay. And based upon that you directed 18 Martha to go look in certain areas for other documents 19 or was it just a general request to look anywhere? 20 A. No, no. General -- it was a request to send 21 a request to the area where these documents are housed. 22 Q. And I know we're using documents, but this 23 also -- 24 A. Tests. 25 Q. The production also consisted of videos?</p>
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<p>1 MR. VINES: Can we go off the record 2 for one second? 3 MR. DONOVAN: Sure. 4 VIDEOGRAPHER: Going off the record 5 at 12:11 and 1 seconds p.m. 6 (An off-the-record 7 discussion was held) 8 VIDEOGRAPHER: We're back on the 9 record at 12:13 and 40 seconds p.m. 10 BY MR. DONOVAN: 11 Q. Mr. Vines has been nice enough to hand you 12 actual hardcopies of the documents, so I don't have to 13 rely upon my computer to generate a document. 14 Does that give you a general 15 familiarity with what was produced back in January of 16 1996? 17 A. Yes. Thank you. 18 Q. Okay. Were you involved in the process of 19 culling those documents from whatever source or asking 20 someone else to produce them? 21 A. Yes. 22 Q. Okay. Do you know -- 23 A. Well, let me answer -- you've asked two 24 questions. 25 I was -- I was involved in having --</p>	<p>1 A. Right. 2 Q. And consisted of photographs and documents, 3 you know, summarizing the results of the tests. 4 A. Right. 5 Q. So -- but we're just going to use that 6 documents -- 7 A. Yeah. 8 Q. -- so -- 9 A. Okay. 10 Q. -- we don't have to talk about all of those. 11 A. Where they're housed. 12 Q. Okay. Was it your direction as to where 13 these searches should take place? 14 A. Where? 15 Q. What location these documents were housed 16 at. 17 A. It was understood. 18 Q. Okay. 19 A. It was my recollection that she sent the 20 request out to where these documents are maintained. 21 Q. Okay. So you said to Martha, I need crash 22 tests, I need sled tests, I need whatever other kind of 23 tests, I need whatever documents the experts were 24 provided with, and she would have disseminated requests 25 to wherever they had to go in order to comply with</p>

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1 that.

2 A. That's true.

3 Q. Do you know why these documents, and, again,  
4 documents meaning videos and pictures, had not been  
5 provided previously in response to GM discovery  
6 demands?

7 A. I don't know if they weren't provided  
8 previously, but assuming they weren't, based on your  
9 question, other than the fact that --

10 No, I have no idea.

11 Q. Why would you provide them again if they had  
12 already been provided?

13 A. I think we had an order where the judge  
14 ordered us to provide them a second time, specifically  
15 called for these documents, so we produced them. Just  
16 an abundance of caution, I guess. My recollection is  
17 just we produced what we were asked to produce.

18 Q. I'm looking at privilege document 288, which  
19 starts with a fax transmittal sheet to you and Martha  
20 Smoly from Andy Langan and Tom Tansey and it says,  
21 Attached is a copy of the order with respect to  
22 discovery, and the order which is annexed to that is  
23 the order of Judge Fuentes filed on -- I can't read the  
24 date, but entered on January 18th, 1996.

25 Is that the order that you were

1 Donald F. Huelke, Joseph S. Rice, and Kenneth F.  
2 Orlowski served on plaintiff on January 18th, 1996.

3 A. That's what it says.

4 Q. Okay. So four days before trial General  
5 Motors serves supplemental reports and that's -- the  
6 order of the Court required General Motors to produce  
7 the documents that they relied upon, and those  
8 documents consisted of crash tests, sled tests, and  
9 other documents. Correct so far?

10 A. Correct.

11 Q. Okay. And my question to you was --

12 And the Court denied adjournment of  
13 the trial date, which was set for January 22nd, 1996.

14 A. Okay.

15 Q. And I will represent to you since I was the  
16 one who received them that those documents were  
17 received at 3 o'clock on Saturday, which would have  
18 been the 20th, in my office they started to be  
19 delivered.

20 A. In compliance with the order.

21 Q. Yes.

22 A. As soon as possible.

23 Q. Right.

24 A. So we did a magnificent job of providing you  
25 the documents as soon as possible.

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1 responding to when you produced the additional  
2 documents in January or February of 1996?

3 A. Give me a second here.

4 This is dated January 18th, 1996.

5 It's -- it's an answer --

6 I believe you asked an earlier  
7 question as to why we produced them when we produced  
8 them as far as timing. In compliance with this order I  
9 believe they were produced, and it was -- there was an  
10 issue here about continuance of trial. The trial was  
11 to start on January 22 and we had what, four days to  
12 produce these documents, so we produced them asap, I  
13 believe, if I remember correctly, as soon as possible,  
14 humanly possible. And I guess my answer to your last  
15 question is that these were relied on by our experts,  
16 Don Huelke, Joe Rice, and Ken Orlowski, and they're  
17 supplemental expert reports.

18 Q. Served on plaintiff on January 18th, 1996,  
19 four days before trial. That's what the order says.  
20 I'm reading from the order. It says, Defendant -- and  
21 this is in paragraph C -- Defendant General Motors is  
22 to produce forthwith any and all documents, videos,  
23 photographs or other information which may be relied  
24 upon, reviewed or specifically or inferentially made  
25 reference to in the supplemental expert reports of

1 Q. Okay. Can you tell me something about what  
2 the process was of finding those documents?

3 A. Initiating the search through a letter, I  
4 believe, requesting the documents be produced, and then  
5 since you got them on a Saturday, we must have worked  
6 -- if you got them at 3 o'clock on Saturday, I don't  
7 know when they were found, they must have been shipped  
8 out as soon as we found them --

9 Q. Okay.

10 A. -- by Fed Ex or whatever.

11 Q. Well, these were documents that your experts  
12 had reviewed already in order to author these  
13 supplemental reports; correct?

14 A. It seems that way based on this order.

15 Q. So, obviously, at some point in time these  
16 documents, these videos, these crash tests, these sled  
17 tests were pulled from the file and given or shown to  
18 your experts in order for them to come to some  
19 conclusions as expressed in these supplemental reports;  
20 correct?

21 A. Not necessarily.

22 Q. Well, the order asks for anything relied  
23 upon in the supplemental reports.

24 A. Right. I don't know if they pulled them  
25 from where they were stored or they went to where they

30 (Pages 114 to 117)

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1 were stored -- or where they were stored and reviewed  
2 them, I mean, that whole sequence there.

3 Q. Okay. Okay. I mean, that's it.

4 A. But, I mean, you raise that as far as your  
5 question.

6 The fact that they reviewed them is  
7 obvious based on the order if the order speaks for  
8 itself.

9 Q. So they had to either review them in the  
10 file or they had to take them out of the file; correct?

11 A. No. They weren't --

12 They reviewed them at -- where they  
13 were housed. It was at the proving grounds. So they  
14 would have had to have gone there, and then we would  
15 have had to retrieve them and then Bates stamp them and  
16 identify them and then make copies of them and send  
17 them out to you. So it's not a, you know -- a slow  
18 process. So, therefore, you ask -- or my statement  
19 earlier is that it sounded like there was a lot of real  
20 effort to get these turned around in just a day or so  
21 and a half.

22 Q. And, again, my question is, why weren't they  
23 produced earlier? If they were crash tests of the  
24 F-car which had been requested in discovery, why  
25 weren't they produced when discovery was --

1 Q. These newly served discovery documents in

2 January of 1996, is it your position that they weren't  
3 produced previously because they weren't responsive to  
4 discovery demands?

5 A. I have two positions, two points.

6 Q. Okay.

7 A. First of all, I don't know if we didn't  
8 produce them the first time and, second of all, I don't  
9 remember if they were asked for in 1989, 1990 in your  
10 discovery request.

11 Q. So you don't know why they weren't produced  
12 previously. I mean, sitting here today you can't tell  
13 me why they weren't produced previously?

14 MR. VINES: Well, I'll object to  
15 that again. I don't know that it's been established  
16 here or in the witness's testimony that they hadn't  
17 been produced before.

18 BY MR. DONOVAN:

19 Q. Privilege document 279 --

20 MR. VINES: It's a thick one.

21 BY MR. DONOVAN:

22 Q. -- is a letter to you and several other  
23 people from Andy Langan, among other documents, there  
24 were actually several documents in there, but it  
25 encloses an inventory sheet of everything that was

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1 A. Well, I don't know if they were --

2 Q. Excuse me. Let me finish my question,  
3 please.

4 A. Okay. Sorry.

5 Q. Why weren't they produced in 1991?

6 A. Don't know if they were asked for in 1991.

7 Q. Okay. Did you review any of the documents  
8 or discovery requests to see whether these were asked  
9 for previously?

10 A. I don't have any independent recollection of  
11 what was asked for.

12 Did I review -- did I review the  
13 documents that were asked for in 1991, did I review the  
14 discovery requests? The answer was yes. When I  
15 reviewed them, it was years prior to what you're  
16 talking about.

17 Q. Is it your position that these newly found  
18 documents were not responsive to the discovery  
19 requests?

20 A. No, I'm not saying --

21 MR. VINES: I'm going to object to  
22 the characterization as newly found. We haven't  
23 established that they were newly found.

24 MR. DONOVAN: Newly served.

25 BY MR. DONOVAN:

1 provided by way of Green discovery up through the  
2 documents served in January of 1990 -- I'm sorry, 1996,  
3 and if you look at page 2 of Mr. Langan's letter, it  
4 says, General Motors has produced almost 2500 pages of  
5 documents to plaintiff in this case.

6 Do you see that?

7 A. Oh, okay.

8 Q. Okay? So if you produced 5,000 documents in  
9 January of 1996 and had only produced 2500 documents  
10 prior to that, some of the 5,000 documents have got to  
11 be new. Does my logic hold through?

12 A. Makes sense.

13 Q. Okay. So, I mean, even assuming 2500  
14 documents were duplicative, 2500 documents had to be  
15 new, correct, by process of elimination?

16 MR. VINES: Let me --

17 THE WITNESS: True.

18 MR. VINES: -- get an objection on  
19 the record and I'll let you proceed with the line of  
20 questioning.

21 There's a bit of a characterization  
22 afoot here that the later supplemented discovery was  
23 wrong or wrongful in some way, and I don't think  
24 there's anything in the record indicating that Judge  
25 Fuentes held that that supplemented discovery was

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1 wrongful. I'm not sure there's any evidence any  
2 motions were made to characterize them as wrongful. So  
3 I just want to make an objection for the record that to  
4 the extent that evidence is being put on here about  
5 that supplemented discovery, we're not conceding or  
6 stipulating, the witness isn't, that that discovery was  
7 anything other than justifiable supplemented discovery.

8 MR. DONOVAN: Noted.

9 BY MR. DONOVAN:

10 Q. Okay. So we've established that at least  
11 some of the materials which were supplemented in  
12 January of 1996 had to be new materials not previously  
13 served; correct?

14 A. Correct.

15 Q. Okay. So do you know where the rest of  
16 these documents came from? And, again, I should have  
17 called them materials. So we're talking about videos  
18 and all.

19 A. I'm kind of working in a vacuum.

20 The rest of the materials, we're  
21 talking about the crash tests, the sled tests,  
22 documents that are above and beyond roof structure  
23 tests, they probably came from Milford Proving Ground  
24 where those tests were housed, or at that time I  
25 believe they were housed at the Milford Proving Ground.

1 B-pillar and sail panel, which was totally a different  
2 allegation from allegation in the first case and,  
3 therefore, material was supplemented in Green II to  
4 meet and defend General Motors regarding the second  
5 allegation.

6 Q. So is it your position that General Motors'  
7 obligation to respond to discovery requests is somehow  
8 linked to what plaintiff's expert claims by way of  
9 alternative design?

10 A. Well, there was no discovery in Green II.  
11 There was -- as I remember, the Court ordered that  
12 there would be no further discovery. The only order  
13 that I remember was this order to produce to you prior  
14 to trial or as soon as possible the new material relied  
15 upon by our experts to defend against your new design  
16 allegation that your expert raised.

17 Q. And you believe that was the only purpose of  
18 these new documents.

19 A. Well, it kind of says that in the court  
20 order, if I read it correctly, that the new documents  
21 were the -- and, again, I'm paraphrasing. I don't have  
22 the order in front of me. If someone has the order, I  
23 would -- but it, I think, clearly says right in there  
24 what the -- what Judge Fuentes had ordered us and why  
25 he ordered us to produce this material because, as you

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1 Q. Okay. So -- I'm sorry.

2 A. No. Go ahead.

3 Q. I didn't mean to interrupt you.

4 A. Go ahead. No. I'm sorry.

5 Q. And, again, now that we've established that  
6 at least some of these materials were new, do you know  
7 why they weren't produced previously? Do you have a  
8 position on that?

9 A. Well, I can tell you, looking at this  
10 exhibit -- or this letter and inventory, that  
11 apparently the, if I'm reading this correctly, in Green  
12 I or the first trial which dealt with the -- some of  
13 the roof issues, we produced 216 compliance tests. So  
14 there may have been a little overlap or redundancy  
15 because I saw in the list that Martha Smoly had put  
16 together that she also produced, again, the 216  
17 compliance package.

18 So I guess your question is why  
19 weren't sled tests and frontal barrier tests produced  
20 earlier, and I will -- I will -- I don't have an  
21 official position on it, but I can only speculate that  
22 -- that the documents were not called for because in  
23 Green I the allegation was roof design -- roof --  
24 excuse me, was fastener design and Green II the actual  
25 allegation changed to, I believe, the defective

1 pointed out in paragraph C, videos, photographs and  
2 other information relied upon in the supplemental  
3 expert reports filed by Don Huelke, Joe Rice, and Ken  
4 Orlowski.

5 MR. DONOVAN: All right. We're down  
6 to the last few minutes on the videotape, so why don't  
7 we take a break. And want to grab some lunch?

8 THE WITNESS: You want to take -- or  
9 just keep going?

10 MR. VINES: Well, he needs to change  
11 the tape no matter what we do.

12 THE WITNESS: Okay.

13 MR. DONOVAN: I think they might  
14 want some sustenance.

15 VIDEOGRAPHER: Going off the record  
16 at 12:37 and 32 seconds p.m.

17 (Lunch recess)

18 VIDEOGRAPHER: We're back on the  
19 record at 1:27 and 20 seconds p.m.

20 BY MR. DONOVAN:

21 Q. I think when we stopped we were talking  
22 about the January 1996 production of documents by  
23 General Motors in the Green case.

24 I had an opportunity over the break  
25 to do some evaluation, and I will represent to you



32 (Pages 122 to 125)

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1 that -- and see if this helps refresh your  
2 recollection, that prior to January of 1996 General  
3 Motors had produced 2400 documents, two videos, and  
4 less than 100 photographs as part of their total  
5 discovery produced up to that point in time. On  
6 January 20th, 1996 General Motors delivered 4,559 new  
7 pages of testing documents, 1,237 photographs of  
8 testing, 117 sled tests and 49 crash tests and 11  
9 videotapes. Okay. So there was, obviously, a  
10 substantial increase in the amount of discovery as of  
11 January 20th, 1996.

12 Do you have any recollection as to  
13 why there was so much produced right before the second  
14 Green trial which was scheduled to begin on January  
15 22nd, 1996?

16 A. You've asked two questions there.

17 Q. Okay.

18 A. Why it was produced when it was pursuant to  
19 the court order. Why there were more documents  
20 produced prior to the Green II trial than Green I  
21 trial, or that allegedly weren't produced in the Green  
22 I trial is because, from my recollection, your  
23 allegation changed.

24 Q. Okay. So --

25 A. And that was met by a response by General

1 BY MR. DONOVAN:

2 Q. Are you saying that there was no obligation  
3 on the part of General Motors to produce any of that  
4 material delivered on January 20th, 1996 before the  
5 supplementation of the expert reports because it was  
6 not responsive to discovery previously served?

7 A. I don't know why it wasn't produced prior.  
8 As we've talked about all morning, when I inherited the  
9 file, I was told discovery was complete. As far as I  
10 understood, discovery was complete. I was more  
11 involved in the second trial when we were ordered to  
12 supplement our discovery because of what was raised by  
13 our experts. We did that.

14 Was that material that was produced  
15 prior to Green trial II produced in Green trial I? I  
16 pointed out before the break it looked like -- if  
17 you're talking about 216 compliance tests, it looked  
18 like those were produced for Green I and also  
19 apparently we reproduced them for Green II, although I  
20 don't have copies, I haven't seen the videos and, well,  
21 19 years or 14 years, so I really can't respond to more  
22 than that.

23 Q. Okay. Even with that massive discovery  
24 production in January of 2006, the documents which  
25 we've referred to as the A through H documents were not

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1 Motors to meet your change in allegation with facts  
2 that would support our defense, our position.

3 Q. Okay. So, for instance, if there's a  
4 discovery request which asks for all crash tests and  
5 only two were provided prior to that and 49 were  
6 provided, it's your position that there was no  
7 obligation to provide the other 46 crash tests  
8 previously because it wasn't plaintiff's contention at  
9 that point in time?

10 MR. VINES: Can you -- sorry to  
11 interrupt.

12 THE WITNESS: Yeah.

13 MR. VINES: Can you say in the  
14 record where that comes from?

15 MR. DONOVAN: Where what comes from?

16 MR. VINES: The numbers that you're  
17 reciting about the numbers of the crash tests.

18 MR. DONOVAN: I could, but it would  
19 take us several hours to do that.

20 MR. VINES: I'll object to the --

21 MR. DONOVAN: Okay.

22 MR. VINES: -- form of the question  
23 and lack of foundation.

24 MR. DONOVAN: You can research it  
25 and it will bear out, I guarantee you.

1 contained in that material. Do you agree with that?

2 A. It's my understanding that's correct. Yes.

3 Q. Okay. Do you know where the A through H  
4 documents were all that time?

5 A. I think they were in microfiche.

6 Q. Okay. Were they --

7 A. At General Motors.

8 Q. Okay. Were they part of any particular file  
9 or files?

10 A. The F-car -- F-car Project Center files.

11 Q. Okay. So it's your understanding that all  
12 the documents, A through H, were in the F-car Project  
13 Center file; correct?

14 A. It's my understanding. Correct.

15 Q. Okay. And it was also your understanding  
16 that a search had been made of the entire F-car Project  
17 Center file in order to produce documents responsive to  
18 the discovery and Judge Ferentz's order; correct?

19 A. That's my understanding now presently.

20 Q. Do you know why those documents were not  
21 flushed out as part of the discovery produced in  
22 compliance with the order in the discovery demanded?

23 A. I have no idea.

24 Q. Okay. Did you ever make any type of an  
25 inquiry as to why they weren't produced?

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1 A. For Green I or Green II trial?

2 Q. Yes.

3 A. Yes, Green I trial or Green II trial?

4 Q. Either or.

5 A. Oh, okay.

6 Didn't know about them at the Green  
7 I trial. Didn't know about them at the Green II trial  
8 until after the trial was over.

9 Q. Okay.

10 A. I asked -- discussed that with Mr. Langan,  
11 asked him what -- did he know why these documents were  
12 not produced or found or located, and he said that he  
13 did not know.

14 Q. Okay. Did you ask Mr. Rice if he knew of  
15 the existence of these documents? Or Dr. Rice.

16 A. When I first found out about the documents A  
17 through H?

18 Q. At any time. Obviously after you found out  
19 about them, but at any time. You know.

20 A. Yeah. Right. That's -- you got me on that  
21 one. A through H.

22 Q. Would you like to see them? I have them.

23 A. No. I'm familiar with those.

24 Q. Okay.

25 A. Did I ask Dr. Rice why we didn't produce

1 microfiche --

2 Q. Okay.

3 A. -- to see if it complied with the discovery  
4 that they were requesting.

5 Q. Was there any kind of investigation  
6 internally so as to try to figure out who had missed  
7 the culling of these documents during whatever search  
8 processes they were engaged in?

9 A. No. No. It was obvious that the documents  
10 were located, they were in the microfiche, and pointing  
11 blame at someone was little of no value at that time.

12 Q. It wasn't of value in order to assure that  
13 it didn't happen again?

14 A. We knew where the documents were. We had  
15 located the documents and we had produced the documents  
16 subsequently to that -- to their finding, therefore all  
17 of that other material would be moot as to pointing  
18 fingers at people.

19 Q. Did you come to any conclusion in your own  
20 mind as to who had dropped the ball with respect to  
21 culling these documents for production?

22 MR. VINES: Object to the form of  
23 the question.

24 THE WITNESS: You're talking about  
25 human error?

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1 them?

2 Q. Yes.

3 A. I don't believe I had a conversation with  
4 Dr. Rice about that issue.

5 Q. Okay. Did you have a conversation with any  
6 of the discovery coordination people who had been  
7 instructed to search through the F-car Project Center  
8 file to make a selection of documents as to why these  
9 documents were not in the documents selected?

10 A. No.

11 Q. Okay. Did you have any conversations with  
12 any other engineer as to why these documents were not  
13 provided?

14 A. No.

15 Q. Didn't you think it would be important for  
16 your future quality assurance that you find out why  
17 such important documents in a case were not produced?

18 A. No.

19 Q. You didn't think that was important.

20 A. No, because when we found out about the  
21 documents, the process of locating F-car documents  
22 changed. The process of relying on our trusted outside  
23 counsel, Rumberger & Kirk, had been changed. The  
24 process now was to search the microfiche on our own and  
25 also to invite outside counsel in to take a look at the

1 BY MR. DONOVAN:

2 Q. No. I'm talking about --

3 A. Or who made the human error --

4 Q. Talking about responsibility.

5 A. -- in missing the documents?

6 Q. Talking about responsibility.

7 A. The human error issue was one that we had  
8 looked at now recently because of this litigation, and  
9 it appears, at least to my knowledge, it's not  
10 satisfactory. I don't have a conclusion as to who made  
11 the human error not to produce these documents.

12 Q. Okay. If it was human error.

13 A. It was human error.

14 Q. How do you know that?

15 A. Because we produced documents all the time  
16 and, obviously, someone missed these documents.

17 Q. Either purposely or not intentionally.

18 A. No. I disagree.

19 Q. Okay.

20 A. It was unintentional.

21 Q. How do you know that someone didn't know  
22 about the existence of these documents and just decided  
23 not to produce them?

24 A. At the Green case?

25 Q. Yes.

34 (Pages 130 to 133)

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1 Tell me every fact you rely upon to  
2 come to the conclusion that these documents were not  
3 intentionally not provided.

4 A. The documents were searched. The microfiche  
5 was searched. The documents were collected and given  
6 to the Rumberger firm who was then responsible for  
7 reviewing the material. It is our understanding that a  
8 fact that we knew was that the Rumberger firm was a  
9 reliable firm, that they were responsible, they had  
10 provided numerous documents in numerous cases, defended  
11 GM very well and that it would have been nothing  
12 intentional for them to miss these documents. Also  
13 there was a question of whether the documents were even  
14 relevant in the first Green I, but beside that point,  
15 it was an issue where it had to be human error because  
16 there was no indication on my watch that these  
17 documents were told -- or someone was told not to  
18 produce these documents.

19 Q. Okay. That you're aware of.

20 A. Absolutely.

21 Q. But you weren't even involved in this case  
22 before November of 1990; correct?

23 A. Right, but I was involved with Green I trial  
24 and Green II trial.

25 Q. You -- I think we went over this, but you

1 Q. Don't speculate for me.

2 So you don't know who reduced the  
3 total universe of F-car Project Center files down to  
4 the 10,000 or so documents which Rumberger Kirk then  
5 reviewed; correct?

6 A. I don't know a person by name.

7 Q. Okay.

8 A. It must have been a GM person because we had  
9 access to the documents.

10 Q. Do you know what criteria was used to reduce  
11 the whole universe of documents in the F-car Project  
12 Center file down to the 10,000 documents that Rumberger  
13 Kirk reviewed?

14 A. I don't understand your question. The whole  
15 universe of F-car documents.

16 Q. Yes.

17 A. To the 10,000 -- the subpart of the --

18 Q. Right.

19 A. -- F-car.

20 Q. What was the criteria used for --

21 A. I don't know. I wasn't involved in that  
22 process --

23 Q. Okay.

24 A. -- in that decision.

25 Q. Now, one of the privilege documents, and I

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1 don't even know what documents Rumberger Kirk were  
2 provided with from which the document -- the 64  
3 documents they returned came from.

4 A. We found out that they were and you pointed  
5 out they were provided 10,000 documents, micro -- the  
6 blow back of the microfiche in the F-car project.

7 Q. Was that the entire F-car Project Center  
8 file?

9 A. It's my understanding that it was not.

10 Q. It was not.

11 So somebody reduced the entire F-car  
12 Project Center file into 10,000 documents which were  
13 sent to Rumberger Kirk; correct?

14 A. That is correct.

15 Q. Okay. Who did that?

16 A. It is my --

17 MR. VINES: If you know.

18 THE WITNESS: No. I don't know.

19 I do know that they received the  
20 documents, they were, as you pointed out earlier --  
21 and, again, I'm going to speculate a little bit, but  
22 they were probably produced to them by the UPC code.

23 BY MR. DONOVAN:

24 Q. Well, I don't want you to speculate.

25 A. Okay.

1 don't remember -- it's one of the really big ones,  
2 purports to contain the documents sent to Rumberger  
3 Kirk. It's 352. 351. No. I'm sorry. It's 352. 352  
4 is all of the documents which purportedly were sent to  
5 Rumberger Kirk for review.

6 Did you review those documents to  
7 see whether the A through H documents were in there?

8 MR. VINES: At what point in time,  
9 Maurice?

10 MR. DONOVAN: Any point in time.

11 THE WITNESS: I'm sorry?

12 BY MR. DONOVAN:

13 Q. Any point in time. Obviously after he found  
14 out that there were A through H documents.

15 A. Did I contact Rumberger & Kirk? I don't --

16 Q. No, no, no. For the purpose of even this  
17 litigation now did you ever go through those documents  
18 to assure yourself that the A through H documents had  
19 been provided to Rumberger so that they could pick them  
20 for the Green case?

21 A. I did not, but I asked Andy Langan at  
22 Kirkland & Ellis if he had done that and he said yes.

23 Q. Okay. Where did those documents which  
24 purportedly were sent to Rumberger Kirk for their  
25 review, where did you find those documents for the

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1 production in this case, if you know? It may not have  
2 been you.

3 A. The microfiche?

4 Q. Well, there's a bunch of documents which  
5 we're being told were -- are copies of --

6 A. Yeah.

7 Q. -- the documents which were sent to  
8 Rumberger Kirk totaling some 10,000 documents in  
9 number.

10 A. Right.

11 Q. Where did GM find those documents in order  
12 to be able to say that? How do we know that those were  
13 the documents sent to Rumberger Kirk? Did somebody  
14 save them? Were they in a box? Were they -- was there  
15 --

16 A. No. The documents were on microfiche and  
17 they were blown back to hardcopy, and either that  
18 original, and I assume it wasn't -- someone made a copy  
19 of the blown back documents and sent them off to  
20 Rumberger & Kirk.

21 Q. No. I'm talking about how do we know the  
22 documents we have now are the same documents Rumberger  
23 Kirk had back then?

24 MR. VINES: I think he's testified  
25 he doesn't have personal knowledge of that.

1 referring to are contained in tab number 352 of the  
2 show cause hearing, and that particular tab would have  
3 approximately 10,000 documents in it, and they were  
4 introduced then in the show cause hearing --

5 MR. DONOVAN: Right.

6 MR. VINES: -- as the documents that  
7 were sent to Rumberger Kirk.

8 MR. DONOVAN: Right.

9 BY MR. DONOVAN:

10 Q. And I'm trying to get from you whether you  
11 have any idea how those documents produced for the  
12 privilege hearing were identified as the same documents  
13 that were produced way back when for Rumberger Kirk.

14 MR. VINES: If you know.

15 THE WITNESS: I don't -- I don't  
16 know.

17 BY MR. DONOVAN:

18 Q. Okay.

19 A. I don't know.

20 Q. Okay. So if I gave you all of the documents  
21 contained in 352 and asked you if you can identify  
22 these documents as the same documents which were sent  
23 to Rumberger Kirk, you couldn't do that.

24 A. Well, wouldn't I take the documents that you  
25 gave me and look at 352 as an index of those

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1 MR. DONOVAN: I don't think he said  
2 that. I mean, if he says that, I'm happy to move on.

3 THE WITNESS: Are we --

4 Which documents are we talking  
5 about, the A through H or the 10,000?

6 BY MR. DONOVAN:

7 Q. No, no, no. The 10,000 documents.

8 A. Right.

9 Q. As part of the privilege hearing 352 are the  
10 documents which GM says were the same documents which  
11 were sent to Rumberger Kirk or copies of the same  
12 documents or blow offs or blow ons or whatever they are  
13 from microfiche.

14 A. Blow back.

15 Q. Blow backs.

16 Do you have any knowledge as to how  
17 that was determined that these documents, privilege  
18 document 352, were the same documents that Rumberger  
19 Kirk was provided with way back when?

20 A. I'm totally missing your question and I  
21 apologize.

22 Q. Okay.

23 MR. VINES: Yeah. Maurice, it may  
24 help to clean up the record a little bit.

25 The 10,000 documents you're

1 documents --

2 Q. No, no, no. I think we're on a different  
3 track.

4 A. -- and just marry up the two and say, okay,  
5 this is document 1 and this is document 3 -- you know  
6 what I mean? Just match what's on the list of the  
7 index.

8 MR. VINES: I think, to clarify,  
9 he's saying if he gave you tab 352, which is the  
10 10,000, and gave that to you.

11 THE WITNESS: Oh, the tab.

12 MR. VINES: Is that correct,  
13 Maurice?

14 MR. DONOVAN: Right.

15 BY MR. DONOVAN:

16 Q. If I gave you --

17 A. So we're not talking about this.

18 Q. No, no, no.

19 A. Okay.

20 Q. We're talking about the 10,000 documents --

21 A. Okay. Okay. I'm sorry.

22 Q. -- which are contained in tab 352. If I put  
23 them -- if I had brought them with me and I put them on  
24 the table in front of you and said can you authenticate  
25 and identify these documents as the identical documents

36 (Pages 138 to 141)

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1 which were produced for Rumberger Kirk's review back in  
2 1990, could you do that?

3 A. I don't think -- no. I don't think I could.

4 Q. Okay. Because you don't know what documents  
5 specifically Rumberger Kirk got.

6 A. Correct.

7 Q. Okay.

8 A. Without an index, and I don't have access to  
9 that. You may have, but I don't.

10 Q. Is there some other way to verify that those  
11 documents are the same documents?

12 A. That Rumberger -- that we sent to Rumberger?

13 Q. Yes.

14 A. I can't think of one right now.

15 Q. Okay. Do you know whether these 10,000  
16 documents were contained somewhere in the, quote, Green  
17 file?

18 A. I thought they were at the coordinator's  
19 file, the coordinator who sent them out to Rumberger &  
20 Kirk. I thought that person kept a file of -- or a  
21 copy of the documents.

22 Q. Okay. Would you agree with me, though, even  
23 though there may have been a copy here of what was  
24 supposed to be in the Rumberger file, we have no idea  
25 whether Rumberger actually got all of those numbers --

1 So it's possible that at that point  
2 these documents were not among the 10,000.

3 MR. VINES: Could you --

4 BY MR. DONOVAN:

5 Q. True?

6 MR. VINES: -- define "these"?

7 MR. DONOVAN: The A through H  
8 documents.

9 MR. VINES: Okay.

10 THE WITNESS: No, I thought they  
11 were a part of the 10,000.

12 BY MR. DONOVAN:

13 Q. What I'm trying to get is how do we know  
14 that? Because we don't have -- we don't have --

15 A. I don't know.

16 Q. -- Rumberger's original 10,000 documents, do  
17 we?

18 A. I don't know.

19 Q. Okay. So even if we assume that those  
20 documents were within the 10,000 which were culled from  
21 the F-car Project Center file, they would have gone to  
22 the discovery coordinator next; true?

23 A. Yes.

24 Q. And the discovery coordinator would have  
25 made a copy of those documents for her file and would

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1 all of those documents in the file which they got?

2 A. I can't answer that question.

3 Q. Okay. Well, is it possible that some of the  
4 documents which were in the discovery coordinator's  
5 file which were intended to be sent to Rumberger Kirk  
6 were not in the collection of documents which Rumberger  
7 Kirk actually got?

8 MR. VINES: I'm sorry. I had  
9 trouble following that. I don't know if the witness  
10 did or not. Could you try it again?

11 MR. DONOVAN: Okay.

12 BY MR. DONOVAN:

13 Q. What I'm trying to do very simply, or maybe  
14 not so simply, is figure out where the possible --  
15 possible loss -- I mean, that's not really a good  
16 word -- where it's possible these documents went  
17 astray. Okay? So we start with the F --

18 If these documents were all in the  
19 F-car Project Center file, A through H, initially --

20 A. A through H. Right.

21 Q. Okay. Someone reduced the F-car Project  
22 Center file down to 10,000 documents. We know that.

23 A. Right.

24 Q. And those were the documents sent to  
25 Rumberger Kirk.

1 have sent a copy of those documents to Rumberger.

2 A. I believe so.

3 Q. Okay.

4 A. Correct.

5 Q. But we don't know whether the Rumberger  
6 10,000 documents was identical to the discovery  
7 coordinator's 10,000 documents unless we sat and went  
8 page by page; correct?

9 A. But it's unlikely that they were not.

10 Q. It's unlikely, but possible.

11 A. Unlikely.

12 Q. Okay. And when they got to Rumberger where  
13 they were reviewed by Eileen Rooney, we don't know  
14 whether the A through H documents were in the documents  
15 that Eileen Rooney reviewed; correct?

16 A. As I sit here right now, I have to say  
17 correct.

18 Q. Okay. But what we do know is that these  
19 documents were not sent back from Rumberger's office to  
20 General Motors or Kirkland & Ellis, the A through H  
21 documents.

22 A. I have no idea.

23 Q. You don't know that?

24 A. No. I know that they were not --

25 No, I do not know what Rumberger did

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1 with those 10,000 documents.  
2 Q. Okay. So you don't know whether the  
3 documents pulled by Eileen Rooney at the Rumberger  
4 office were the identical documents which Rudock sent  
5 to Kirkland & Ellis to Ron Betman.  
6 A. I don't know.  
7 Q. You don't know one way or the other.  
8 A. Right.  
9 Q. Okay. And we do know because we presumably  
10 have the documents that Rudock sent to Betman at  
11 Kirkland & Ellis that none of the A through H documents  
12 were contained there. Is that your understanding?  
13 A. That is my understanding.  
14 Q. Okay. Now, document Addendum A was not even  
15 among the documents sent to Rumberger Kirk for review.  
16 Is that your understanding?  
17 A. I don't know how you know --  
18 MR. CARROLL: Asked and answered.  
19 THE WITNESS: I don't know.  
20 MR. DONOVAN: Not of this witness.  
21 MR. CARROLL: I think you asked  
22 that.  
23 MR. DONOVAN: No. He may have  
24 answered it, but I didn't ask it. I asked it  
25 yesterday.

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1 BY MR. DONOVAN:  
2 Q. Do you know whether all of the documents  
3 contained in A through H were sent to -- were -- strike  
4 that.  
5 Do you know whether all the A  
6 through H documents were among the documents sent to  
7 Rumberger Kirk?  
8 A. I don't know.  
9 Q. Okay. It has been indicated in General  
10 Motors' answers to interrogatory that Addendum A, the  
11 first document, was not in the documents sent to  
12 Rumberger Kirk. Are you familiar with that?  
13 A. No.  
14 Q. Okay. It is also contended by General  
15 Motors that only one page of document Addendum B was  
16 part of the documents sent to Rumberger Kirk. Do you  
17 have any knowledge of that?  
18 A. No.  
19 Q. And that documents C through H in their  
20 entirety were among the documents sent to Rumberger  
21 Kirk. Do you have any knowledge of that?  
22 A. And how do we know that?  
23 Q. This is by way of an answer to  
24 interrogatory.  
25 A. Okay. Filed by General Motors.

1 Q. In this case.  
2 A. Okay.  
3 Q. It's -- it's actually an amended response to  
4 interrogatory number 2, which reads as follows: One  
5 page of document B and document D through H were part  
6 of a larger group of F-car Project Center and Fisher  
7 Body documents that General Motors sent to the law firm  
8 of Rumberger, Kirk & Caldwell for review in October of  
9 1990. Okay?  
10 So document A wasn't sent, every --  
11 only one page of B, C wasn't sent, and D through H  
12 were.  
13 MR. VINES: I'm going to get an  
14 objection on the record. He's not a 30(b)(6) witness,  
15 so he's just answering from his own personal knowledge  
16 on this. He doesn't have a responsibility to vouch for  
17 everything in that file.  
18 MR. DONOVAN: Okay. I'm just asking  
19 if he has any personal knowledge of the information I  
20 just relayed to you.  
21 THE WITNESS: No.  
22 BY MR. DONOVAN:  
23 Q. Okay. So if I was to ask you why -- if  
24 these documents were all contained in the F-car Project  
25 Center file, why certain documents were picked and why

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1 certain documents weren't picked to send to Rumberger  
2 Kirk, you wouldn't have the answer for me.  
3 A. That's correct.  
4 Q. Prior to the motion to supplement the record  
5 in Green -- do you know what I'm talking about?  
6 A. Yes.  
7 Q. And that was in the appellate division --  
8 A. Correct.  
9 Q. -- in the A through H documents?  
10 A. Right. Just before -- we filed it just  
11 before -- a day or two before oral argument.  
12 Q. Well, I don't know about that, but it was  
13 before oral argument in the appellate division.  
14 A. Yeah. I think it was a day or two.  
15 Q. Okay. Is that the first time you learned  
16 that there was an allegation that certain documents had  
17 not been provided as part of General Motors' response  
18 to discovery demands in the order of Judge Ferentz?  
19 A. No.  
20 Q. Okay. When was the first time you learned  
21 that there was an allegation that certain documents had  
22 not been provided?  
23 A. Best of my recollection, the first time was  
24 when our negotiator came back from trying to resolve  
25 this case with your firm and was told that your firm

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<p>1 had some documents that we didn't produce during the</p> <p>2 second trial and that if we didn't settle up with you</p> <p>3 and pay a premium, that you were going to file a</p> <p>4 lawsuit against us.</p> <p>5 Q. Okay.</p> <p>6 A. And --</p> <p>7 Q. I'm sorry.</p> <p>8 A. And that person came back and, I believe,</p> <p>9 reported that, if I remember correctly, and asked what</p> <p>10 that was all about. I had no idea. He didn't have a</p> <p>11 name of a case. I called Mr. Langan, asked him if he</p> <p>12 knew anything about what that issue was and he said no,</p> <p>13 and I had no clue and there was no leads to figure out</p> <p>14 what anybody was talking about.</p> <p>15 Q. Okay. If he didn't give you a case, how did</p> <p>16 you know to call Mr. Langan?</p> <p>17 A. To ask about the documents.</p> <p>18 Q. Okay. But --</p> <p>19 A. That if he knew or had any idea of what the</p> <p>20 heck was going on, if he had heard anything, if he knew</p> <p>21 what was going on.</p> <p>22 Q. Well, you knew it was in reference to the</p> <p>23 Green case.</p> <p>24 A. Yeah.</p> <p>25 Q. Oh, okay. I thought you said he didn't have</p>	<p>1 Q. Were you aware --</p> <p>2 A. Other than the fact that the case didn't get</p> <p>3 resolved, but that's about it --</p> <p>4 Q. Okay.</p> <p>5 A. -- as to what else was discussed.</p> <p>6 Q. Did you --</p> <p>7 Did he tell you anything about the</p> <p>8 offer which was made at that time to resolve the case</p> <p>9 by General Motors?</p> <p>10 A. I'm not -- I'm not --</p> <p>11 Did he tell me about the offer as to</p> <p>12 how much --</p> <p>13 Q. Yeah.</p> <p>14 A. -- the dollar figure? No. I don't remember</p> <p>15 what the amount of the dollar figure.</p> <p>16 MR. VINES: I'm going to put an</p> <p>17 objection on the record to this line of questioning</p> <p>18 because it goes to settlement negotiations, it would be</p> <p>19 excludable as evidence, and it's improper to be asking</p> <p>20 witnesses about the content of settlement negotiations.</p> <p>21 MR. DONOVAN: Well, I don't -- that</p> <p>22 may be true, but it has another admissibility angle to</p> <p>23 it, which is I think Mr. Ziolkowski just accused my</p> <p>24 firm of trying to coerce a settlement as a premium to</p> <p>25 the 18 million dollars which was by then a 30 million</p>
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<p>1 a case name for you.</p> <p>2 A. No. The investigator, or the --</p> <p>3 Q. Negotiator.</p> <p>4 A. The negotiator didn't have a case name.</p> <p>5 Q. Do you know who that was?</p> <p>6 A. I believe it was Mike Rezmerski.</p> <p>7 Q. Okay. And do you know when that alleged</p> <p>8 meeting took place?</p> <p>9 A. It was right after, I believe, we filed our</p> <p>10 appellate brief.</p> <p>11 Q. Okay.</p> <p>12 A. And I don't remember what year. '96 maybe.</p> <p>13 I don't have a clue as to what year that was.</p> <p>14 Q. Okay. And that was after Green II and there</p> <p>15 was at that time a multimillion dollar verdict against</p> <p>16 General Motors.</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And do you know the purpose why Mr.</p> <p>19 Rezmerski, if it was Mr. Rezmerski, came to New Jersey</p> <p>20 to discuss the verdict?</p> <p>21 A. Try to resolve the case.</p> <p>22 Q. Okay. Other than what Mr. Rezmerski said</p> <p>23 about those conversations, were you aware of anything</p> <p>24 else which was discussed at that time?</p> <p>25 A. No.</p>	<p>1 dollar verdict. So I think the credibility of those</p> <p>2 contentions of what Mr. Rezmerski represented and did</p> <p>3 not represent and what he was told about that</p> <p>4 conference and not told about that conference are</p> <p>5 certainly now admissible.</p> <p>6 MR. VINES: I'm not instructing him</p> <p>7 not to answer, but I --</p> <p>8 MR. DONOVAN: Okay. I just want you</p> <p>9 to understand that there is --</p> <p>10 MR. VINES: We move that it be</p> <p>11 struck from this record and we'll preserve it for</p> <p>12 movement at trial, if necessary, to exclude it.</p> <p>13 MR. DONOVAN: There is a method to</p> <p>14 the madness.</p> <p>15 MR. CARROLL: Go off for a sec,</p> <p>16 please.</p> <p>17 MR. VINES: Off the record, please.</p> <p>18 VIDEOGRAPHER: Going off the record</p> <p>19 at 2:01 and 40 seconds p.m.</p> <p>20 (Recess)</p> <p>21 VIDEOGRAPHER: We're back on the</p> <p>22 record at 2:42 and 20 seconds p.m.</p> <p>23 MR. CARROLL: During a break we --</p> <p>24 the lawyers left the witness and agreed -- and tell me,</p> <p>25 Mr. Donovan, if I state this correctly -- that the line</p>

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1 of questioning we were discussing you will hold in  
2 abeyance for the time being. The only way that we will  
3 come back to this line of questioning regarding Mr.  
4 Rezmerski's actions and what he may have reported to  
5 Mr. Ziolkowski is if we name Mr. Rezmerski, add him to  
6 GM's witness list, and if we do that, we've agreed that  
7 we will make Mr. Ziolkowski available for a limited  
8 deposition, of course, not waiving any objections we  
9 may have for the judge, but just the very fact that we  
10 will make him available voluntarily at a time  
11 convenient for you prior to trial if we add Mr.  
12 Rezmerski as a witness.

13 Is that a fair statement?

14 MR. DONOVAN: It is subject to a  
15 couple caveats. One, we're assuming Mr. Rezmerski is  
16 not on the witness list now, which I think is accurate,  
17 but if he's on the witness list some obscure place,  
18 then, you know, you've agreed not to call him as a  
19 witness in light of the waiver of questioning on the  
20 Rezmerski issue at this time.

21 MR. CARROLL: That's fair.

22 MR. DONOVAN: Okay.

23 MR. CARROLL: And I will represent  
24 to you that if Mr. Rezmerski is on the witness list, it  
25 was -- it was inadvertent and we will agree to your

1 what these documents were or could have been, if he had  
2 any idea, and that was the only person I spoke to.

3 Q. Okay. And no one at that time was aware  
4 that the documents in question were at least  
5 represented by the A through H documents: true?

6 A. That's correct.

7 Q. Okay. Were you -- prior to the actual  
8 receipt of the motion to supplement the record and  
9 which had annexed to it the Addendum A through H  
10 documents, had you ever heard of a design which was  
11 considered in the F-car called a vista vent or a  
12 modified vista vent?

13 A. Prior to receiving A through H?

14 Q. Yes.

15 A. No.

16 Q. Okay. Did anybody indicate to you that they  
17 had known of a design or a design concept, whatever you  
18 want to call it, which consisted of a vista vent or a  
19 modified vista vent before receipt of the actual motion  
20 to supplement the record in the appellate division?

21 A. No.

22 Q. Okay. So nobody came out of the woodwork  
23 and said, oh, I know all about those documents, I've  
24 known about them for years.

25 A. No.

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1 limitation that if he's on the list already, he will  
2 not be called.

3 MR. DONOVAN: Okay. So just, I  
4 mean, generally you have no intention of using Mr.  
5 Rezmerski as a witness at time of trial right now.

6 MR. CARROLL: At this time we do  
7 not.

8 MR. DONOVAN: But if you do, then we  
9 may have to explore this issue further.

10 MR. CARROLL: Fair enough.

11 MR. DONOVAN: And in light of that,  
12 we can proceed with something else.

13 MR. VINES: We may want to give the  
14 court reporter a spelling of that last name.

15 MR. CARROLL: R-e-z-m-e-r-s-k-i.

16 MR. DONOVAN: Okay. With that...

17 BY MR. DONOVAN:

18 Q. Other than your conversation with Andy  
19 Langan about the potential of there being unproduced  
20 documents, did you speak to anybody else about that?  
21 And I'm talking before you actually got the motion or,  
22 you know --

23 A. Not at that time.

24 Q. Okay.

25 A. Yeah. I spoke to Andy about the documents,

1 Q. Nothing like that. Okay.

2 A. No.

3 Q. Were you surprised that these documents were  
4 found, you know, in Tennessee, but weren't produced in  
5 Green?

6 A. I don't think they were found in Tennessee.  
7 They were found up here in Michigan.

8 Q. Okay.

9 A. Was I surprised that they were found? No.  
10 No. I mean, initially they were just A through H. Had  
11 no -- the documents themselves to me had no real  
12 relevance. After reading your motion and reading the  
13 documents I had a question as to the documents  
14 themselves as to, you know, where they were and how we  
15 inadvertently missed them.

16 Q. Okay. Did you ever find out where they  
17 were?

18 A. In the microfiche.

19 Q. Okay. And did you ever find out how you  
20 missed them?

21 A. No.

22 Q. No. Even up to this day.

23 A. Just human error.

24 Q. Okay. Now, do you agree that the A through  
25 H documents are relevant to the discovery demands



40 (Pages 154 to 157)

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1 served upon General Motors by the plaintiff and as  
2 ordered by Judge Ferentz?

3 A. Judge Ferentz was the first judge?

4 Q. Yes.

5 A. I have a question whether some of those are  
6 relevant, that they were ordered by the judge to  
7 produce, but --

8 Q. Okay. Why don't you take a look at them and  
9 see if you can pinpoint for me which ones do you think  
10 should not have been produced because they weren't  
11 relevant to the discovery demands which had been  
12 served. And just in case, I don't want to be unfair to  
13 you, I'm going to hand to you what's been previously  
14 marked Exhibit I through 5, which are the discovery  
15 demands which we claimed before the appellate court and  
16 the appellate court agreed to supplement based upon  
17 that presentation discovery demands which we believe  
18 those documents are responsive to. So I don't want you  
19 to be using the discovery demands and --

20 MR. VINES: Hang on just one second,  
21 Maurice.

22 MR. DONOVAN: Um-hum. That was an  
23 annexation to the motion to supplement the record. I  
24 think it was my affidavit. First came the addendum  
25 documents A through H and then right behind that came

1 thought these may be -- maybe not be responsive to, or,  
2 I guess, you thought maybe were responsive to.

3 MR. DONOVAN: We thought were  
4 responsive.

5 MR. WEISS: Okay.

6 MR. VINES: And one last question.

7 The first exhibit is titled Selected Request to Produce  
8 Documents Propounded by Plaintiff Michael Green Upon  
9 General Motors. The selected part was your selection?

10 MR. DONOVAN: Correct.

11 MR. VINES: Okay.

12 MR. DONOVAN: And the ones presented  
13 to the appellate division in New Jersey with our  
14 request that these documents did not -- were not  
15 produced even though they were asked for in those  
16 questions and those demands.

17 MR. VINES: Okay. So if we hunt  
18 through the record of the Green case, we'll find this  
19 set of exhibits attached to your motion.

20 MR. DONOVAN: Yes.

21 MR. VINES: Just as it is right  
22 here.

23 MR. DONOVAN: Yep.

24 MR. VINES: Okay. But these weren't  
25 introduced in the show cause hearing, were they, or --

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1 that Exhibit I through 5. I think the first one is a  
2 selected demand to produce, which we believe was not  
3 complied with by General Motors, and the second one I  
4 think is the interrogatories which we believe was not  
5 complied with and which we believe the A through H  
6 documents should have been produced pursuant to those  
7 requests.

8 MR. VINES: So what you just handed  
9 us are exhibits to your motion.

10 MR. DONOVAN: Yes.

11 MR. VINES: So these are documents  
12 that you have created or your office created or  
13 assembled.

14 MR. DONOVAN: But those -- but the  
15 interrogatories and demand to produce were in the  
16 original set of interrogatories and demand to produce  
17 with General Motors' answer.

18 MR. WEISS: So these are you -- your  
19 firm retyping --

20 MR. DONOVAN: Yes.

21 MR. WEISS: -- the request that you  
22 propounded on General Motors.

23 MR. DONOVAN: Retyping the ones  
24 we --

25 MR. WEISS: The ones that you

1 MR. DONOVAN: Yeah, because they  
2 were annexed to --

3 MR. VINES: Part of something else.

4 MR. DONOVAN: -- the motion to  
5 supplement the record.

6 MR. VINES: Okay.

7 MR. DONOVAN: So they're in there.  
8 I think they were one of our exhibits.

9 MR. VINES: Thank you.

10 And just to clarify the record even  
11 further, that motion and these exhibits were filed  
12 approximately in the fall of '97. We could find the  
13 record when you filed that.

14 MR. DONOVAN: January of -- January  
15 of '98.

16 This may help you. This is my only  
17 copy of the motion to supplement the record, but if you  
18 look for the document, that's what it's annexed to.

19 THE WITNESS: It's going to take me  
20 more than just 30 seconds to review this.

21 MR. DONOVAN: We can go off the  
22 record.

23 MR. VINES: Can we go off the record  
24 for a couple minutes?

25 VIDEOGRAPHER: Going off the record

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1 at 2:55 and 28 seconds p.m.  
2 (Recess)  
3 VIDEOGRAPHER: We're back on the  
4 record at 3:14 and 24 seconds p.m.  
5 BY MR. DONOVAN:  
6 Q. Mr. Ziolkowski, when we took the break, you  
7 were going to look at those documents a little more  
8 thoroughly and tell me which of the addendum documents  
9 A through H do you not believe should have been  
10 provided with as part of discovery in the Green case.  
11 I think that was a double negative, but...  
12 A. Most of them.  
13 Q. Okay.  
14 A. But specifically A and possibly B and  
15 anything else that didn't refer to the T-top.  
16 Q. Well, why don't you go document by document  
17 for me. I don't know which ones you're talking about  
18 which --  
19 You said not A, not B.  
20 A. Right.  
21 Q. So how about C?  
22 MR. CARROLL: I think he said  
23 possibly B.  
24 BY MR. DONOVAN:  
25 Q. Possibly B.

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1 A. I'm sorry?  
2 Q. You're right. You said possibly B. I don't  
3 know what that means, but possibly B.  
4 Possibly B should be included or  
5 possibly it shouldn't be included?  
6 A. Okay. Let me go back to B.  
7 B talks about just bullet points.  
8 cost sales, price volume. It doesn't really focus on  
9 any roof design issue except for the second bullet  
10 point where it says removable center section, retaining  
11 roof rails, and I'm not sure what that means. So I  
12 say -- if I had a better explanation for that second  
13 line, I could probably tell you yes or no, but as it  
14 stands right now, probably no.  
15 My understanding, the removable  
16 center section, retaining roof rails. This is a T-top  
17 and my understanding of a roof rail, it runs along the  
18 side of the vehicle and there's no roof rail in the  
19 vehicle, so we're looking at a T-top issue.  
20 Green I dealt with the court order  
21 talking about limiting the discovery to T-tops. So --  
22 so when we get into the C, D, E, F, G, and H parts that  
23 deal with vista vents and other designs of that nature,  
24 it's questionable whether the Court ordered that  
25 discovery.

1 Focusing on the order by Judge  
2 Ferentz, paragraph 5, it says it shall -- documents --  
3 documentation requested be supplied, it shall be  
4 limited to the information and documentation relevant  
5 to plaintiffs two alleged claims of defect --  
6 defectively designed T-tops and defective tires, and I  
7 don't believe A and B deal with either one of those  
8 issues. C deals with -- on its face the language talks  
9 about design alternatives. That would probably be the  
10 T-hatch and the vista vent designs. We're focusing  
11 more on the design of the F-car roof as opposed to  
12 alternative designs as far as the design of the T-top.  
13 The -- D. I think D talks about  
14 mass of the T-top, et cetera. So there may be some  
15 issue as to would this document have been produced if  
16 we had it. The answer is yes.  
17 Q. So D should have been produced?  
18 A. Well, these discovery responses -- or these  
19 discovery requests are so vague, I've got to go by the  
20 court order, and -- so I'm looking for a defectively  
21 designed T-roof and issues about the T-roof.  
22 Q. With all due respect, Mr. Ziolkowski, if you  
23 go down, it says (1) -- it says, In connection with  
24 providing more specific requests to plaintiff's  
25 interrogatories, supplemental interrogatories and

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1 request for production of documents --  
2 MR. VINES: Maurice, where are you  
3 reading from so we can follow?  
4 MR. DONOVAN: This is from Judge  
5 Ferentz's order which Mr. Ziolkowski was just reading  
6 from.  
7 BY MR. DONOVAN:  
8 Q. The information and documents requested and  
9 to be supplied shall be limited to the information and  
10 documents relevant to plaintiff's two alleged claims of  
11 defect, (1) defective designed roof and (2) defective  
12 tires and specifically limited to the information and  
13 documentation related to the roof system/structure and  
14 any connected or related parts, including the left rear  
15 portion of the 1982 and 1986 (sic) model year Chevy  
16 Camaro manufactured with a T-roof and the Goodyear  
17 P-245/50VR-16 tires.  
18 A. Okay. So --  
19 Q. Actually, I mean, I read this as saying  
20 there you have to provide it with respect to the  
21 defective T-roof, all documents related to the roof  
22 system and any connected parts which includes, but not  
23 necessarily limited to, as we would say in the legal  
24 business, the T-roof. You don't read it that way?  
25 MR. VINES: I'm going to object to

42 (Pages 162 to 165)

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1 the form of the question. I think you should ask him  
2 whether he thinks the documents were responsive to the  
3 discovery requests and not debate with him the proper  
4 legal interpretation of the discovery requests.

5 MR. DONOVAN: I did, but he didn't  
6 read the whole discovery request, and I want to make  
7 sure that he's incorporated the last part in his  
8 analysis.

9 BY MR. DONOVAN:

10 Q. Or do you just reject that as not being  
11 relevant?

12 MR. VINES: Object to the form of  
13 that question. You can ask him whether he studied the  
14 discovery requests in the court order and then ask him  
15 whether they were responsive to those.

16 BY MR. DONOVAN:

17 Q. Did you understand my question?

18 A. I read the whole -- I followed this  
19 paragraph 5 as you read it.

20 Q. Okay.

21 A. I'm not totally disregarding the language.  
22 The Court keeps talking about T-roofs and that's what I  
23 look at. It's not...

24 Q. So you believe your obligation under this  
25 order was only to provide documentation with respect to

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1 Q. Oh. I thought you were.

2 So what else besides the T-roof does  
3 it require you to produce?

4 A. We're tying this order with these -- with A  
5 through H. One has nothing to do with roof of any  
6 kind. They're talking about door, glass, seat belts.  
7 In fact, the memo is entitled 1982 F Passive Restraint  
8 Consideration.

9 Q. Um-hum.

10 A. Door frame. That has nothing to do with the  
11 -- with the -- either the discovery as written or the  
12 court order.

13 B, as I indicated --

14 Q. Let's just stay with A for a minute.

15 So are you discounting the sentence  
16 in the middle of the page that says, however, it  
17 appears that no one is very interested in a full frame  
18 glass door, nor is there any great interest, it  
19 appears, in pursuing an alternative to the T-hatch  
20 roof? Doesn't that make reference to the T-hatch roof  
21 and an alternative design, that there was no interest  
22 in it?

23 A. That's what it says.

24 Q. Okay. So that wouldn't qualify this  
25 document for production under the Court's order or the

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1 T-roofs?

2 A. I had nothing to do with the production of  
3 documents in this case.

4 Q. Do you believe that this order only requires  
5 you to produce - you meaning General Motors - documents  
6 related to the T-roof?

7 A. That was on Green I?

8 Q. On the discovery requests which were served  
9 by the plaintiff on General Motors.

10 MR. VINES: I'll object to that  
11 question because he's answering from his own  
12 standpoint, not as a representative in a 30(b)(6)  
13 sense.

14 THE WITNESS: We could differ in our  
15 interpretation of this language. I'm looking at this  
16 and what I'm viewing is the broadest sense, they're  
17 talking about T-roofs, defectively designed T-roofs.

18 BY MR. DONOVAN:

19 Q. That's my question. I'm just trying to  
20 understand what you're saying.

21 Your reading of the same paragraph 1  
22 just read, your understanding is that it only requires  
23 you to produce documents related to the T-roof and  
24 nothing else.

25 A. I'm not saying that.

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1 discovery requests in your opinion?

2 I'm just asking -- it's not a trick  
3 question.

4 A. It is a trick question because it --

5 Q. How is it a trick question, Mr. Ziolkowski?

6 A. Well, I don't want to argue with you and  
7 debate it. I'm just saying that it's my opinion that  
8 this first document doesn't -- isn't requested in  
9 either the court order or your discovery --

10 Q. Okay.

11 A. -- request.

12 Q. Because it has nothing to do with T-roofs or  
13 another reason?

14 A. That it is not -- it doesn't respond to any  
15 one of these requests.

16 Q. Okay.

17 A. The fact that it uses the word  
18 alternative --

19 Your request, interrogatory 28,  
20 says, Did you consider any alternative approach to the  
21 design or construction of said product? 69 deals with,  
22 Describe in detail each and every alternative design.  
23 That doesn't cover that.

24 Q. It doesn't.

25 A. No.

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1 Q. Okay.  
2 A. At least in my opinion --  
3 Q. Okay. That's -- that's --  
4 A. -- speaking.  
5 Q. That's whose opinion I'm asking for, so...  
6 A. Okay.  
7 Q. There's no right or wrong here.  
8 A. Now --  
9 Q. Document B.  
10 A. Again, I pointed out the removable center  
11 section, retaining roof rails. I don't know what that  
12 means. It's inconsistent with what I understand a  
13 T-top to be. So if it --  
14 I'm working in a vacuum with that  
15 line.  
16 Q. Okay.  
17 A. But other than that, there doesn't seem to  
18 be anything else that is asked for in your request.  
19 Q. Would you want to get some kind of  
20 engineering input into what that meant before you made  
21 a final decision?  
22 A. Sure.  
23 Q. Okay. So you put a question mark on B.  
24 A. That's what I did.  
25 Q. Okay. C.

1 in. It says here several alternatives were reviewed.  
2 and I'm assuming that this attachment talks about  
3 alternatives that were reviewed.  
4 Q. Okay. Had you ever seen that diagram  
5 before, the -- before you got the motion to supplement?  
6 A. The 3?  
7 Q. Yes.  
8 A. No.  
9 G. As I'm reading this material, I  
10 don't see where that's -- this talks about the  
11 windshield angle. I don't know if that one's -- I  
12 think that one's more a no than a yes.  
13 And H. Okay. I would say since  
14 they're -- performance comparison. I would say H is a  
15 yes.  
16 Q. Before getting this document were you  
17 familiar with the roof configuration of the Lancia  
18 Spider?  
19 A. I don't believe so.  
20 Q. Okay. Had you ever heard anything about  
21 testing being done by General Motors on a Lancia Spider  
22 roof?  
23 A. No.  
24 Q. Did you ever look to see whether there were  
25 any more documents in the F-car Project Center file

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1 A. C? If you look at your discovery, you're  
2 talking about -- and if you read it literally, you're  
3 talking about alternative designs. If that's the way  
4 we're going to go by your understanding of what the  
5 court order says, then C apparently talks about an  
6 alternative design, vista vent design.  
7 Q. So does that mean it's in?  
8 A. Yes.  
9 Q. Okay. D.  
10 A. D is -- I saw somewhere in here where it was  
11 in -- oh. I think the most probable configuration is  
12 page 2. I would say if going, again, by number 68 to  
13 mean any alternative design for the F-car roof, then  
14 that would be in.  
15 Q. In. Okay. E.  
16 A. Again, if -- as I stated before, if 68 and  
17 69 mean any alternative designs for the F-car roof and  
18 not limited to T-top, then that one's in because you  
19 talk about vista vent, modified vista vent, and  
20 T-hatch.  
21 Q. Okay. F.  
22 A. Again --  
23 Well, other than the drawings of the  
24 modified hatch, vista vent, and T-hatch, it's vague,  
25 but it probably fits into -- into -- it kind of ties

1 which made reference to these Spider testing, Lancia  
2 Spider testing?  
3 A. Did I? No.  
4 Q. Have you ever come across any more documents  
5 referencing the Lancia Spider testing?  
6 A. No.  
7 Q. Would you agree with me that, with respect  
8 to Addendum H, this is kind of the results of testing  
9 which was done rather than the actual test results?  
10 MR. VINES: Could you restate that?  
11 I didn't follow that one.  
12 MR. DONOVAN: Yeah.  
13 BY MR. DONOVAN:  
14 Q. This document reflects conclusions which was  
15 drawn from certain testing rather than being the  
16 testing itself.  
17 A. I don't --  
18 It's a report based on testing  
19 apparently that was done, and I think the testing --  
20 Give me one second, please.  
21 Q. Sure.  
22 A. I think they were comparing the Lancia, the  
23 T-top as far as structural integrity and vibration  
24 standpoint.  
25 Q. Okay.

44 (Pages 170 to 173)

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1 A. I think --  
2 I'm sorry. What was the question?  
3 Did I see any --  
4 Q. The question was, would you agree with me  
5 that this document reflects the conclusions of testing  
6 rather than the raw data or the testing itself?  
7 A. That is correct.  
8 Q. Okay.  
9 A. And it's a report based on some analysis  
10 someone did, a Mr. Kennel, K-e-n-n-e-l, and Mitchell  
11 Scherba, S-c-h-e-r-b-a.  
12 Q. So at some point in time they were documents  
13 reflective of the actual raw data for the testing, may  
14 have been some pictures of the testing, may have been  
15 some videos of the testing?  
16 MR. VINES: That calls for  
17 speculation, I think.  
18 THE WITNESS: For this?  
19 BY MR. DONOVAN:  
20 Q. Yes. Based upon --  
21 A. This here?  
22 Q. Yeah, reading that.  
23 A. If it was -- if it was raw data, pictures,  
24 and real data.  
25 Well, depending on how they did this

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1 testing.  
2 Q. Okay.  
3 A. If they did this testing with a computer  
4 simulation, the answer would be no. If they did real  
5 vehicle testing, the answer would be probably yes.  
6 Q. Okay. Can you tell from that document  
7 whether this is real vehicle testing or computer  
8 testing?  
9 A. Can't tell. I can't tell.  
10 Q. Okay. If the A through H document were  
11 contained among the 10,000 documents which Rumberger  
12 Kirk was going to review, would you have wanted them to  
13 be culled from the 10,000 documents irrespective of  
14 whether they ultimately made the cut to go as Green  
15 discovery or not?  
16 A. The answer is yes.  
17 Q. Now --  
18 A. I don't know about --  
19 The answer is yes.  
20 Q. Okay. Now, you dealt --  
21 Did you deal with Joe Rice in --  
22 during the period of time you were responsible as the  
23 in-house attorney for the Green matter?  
24 A. I spoke to him about the case, yes.  
25 Q. Okay. Had you dealt with Mr. Rice before

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1 the Green case on other cases which you had handled?  
2 A. I believe so. Yes.  
3 Q. Okay. And those would have been cases other  
4 than roof cases, but you weren't handling roof cases up  
5 until October of '90 or November of '90?  
6 A. I don't have any independent recollection of  
7 any specific case other than the fact that he sat at  
8 field performance analyses and I would have met him,  
9 talked with him. I don't know if it was case related  
10 or just on a personal basis. I don't remember.  
11 Q. Okay. Did you ever use him as an expert in  
12 any of the other cases which were non-roof crush cases  
13 or rollover cases?  
14 A. I don't remember.  
15 Q. You don't remember.  
16 Do you know what experience Joe Rice  
17 had as an engineer at General Motors?  
18 A. He was --  
19 I don't know his resume' by heart,  
20 but I think he was an engineer working at Fisher Body.  
21 Q. Do you know what years?  
22 A. I don't have -- I don't have any  
23 recollection.  
24 Q. Do you know what car programs would have  
25 been around while he was working at Fisher Body?

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1 A. Fisher Body was kind of a -- for lack of a  
2 better way of saying it, it was kind of a catchall  
3 institution where they worked on a lot of different  
4 vehicles, different components of different vehicles.  
5 I don't know if they ever -- I don't know about  
6 specific vehicles he worked on. I know he had an  
7 aeronautics background, I believe.  
8 Q. Mr. Rice?  
9 A. Yes.  
10 Q. Okay. Do you know what cars specifically he  
11 worked on during his tenure at Fisher Body?  
12 A. No, I don't.  
13 Q. Do you know whether he ever worked directly  
14 on the F-car?  
15 A. He either worked on --  
16 Okay. I don't know. It was either  
17 the F-car or the Corvette, but I'm not sure. It was  
18 one or the --  
19 I don't know.  
20 Q. Okay.  
21 A. I don't know the answer to that question.  
22 Q. Do you know whether he ever worked directly  
23 on the T-roof?  
24 A. No. I don't know.  
25 Q. Okay. Do you know whether he was ever

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1 involved in any type of testing of alternative designs  
2 for the F-car?

3 A. I don't know.

4 Q. Okay. Tell me what experience Mr. Rice  
5 would have as an engineer assigned to the Green file  
6 dealing with a roof crush case, non-rollover.

7 A. What type of experience?

8 Q. Yeah. What expertise did he bring to that  
9 table?

10 A. He had extensive amount of experience in  
11 metal - I don't want to call it metallurgy - finite  
12 element analysis. He had extensive amount of  
13 experience measuring and determining roof metal  
14 strength, fatigue. He had a large amount of knowledge  
15 in glass, particularly laminated versus tempered glass,  
16 weight of glass. So he would have been extremely  
17 important source of information on Green I where it was  
18 indicated that the glass came off, separated from the  
19 vehicle and hit Mr. Green on the head. He was also,  
20 from my understanding, familiar with roof strength  
21 testing, 216 testing. I think he had experience in  
22 welds. So I think he had a lot of experience.

23 Q. Okay. Do you know where he got his  
24 experience in finite metal analysis?

25 A. I think that was with the -- he worked for

1 experience from.

2 A. I don't know, but he has it.

3 Q. But you knew he had it.

4 A. Yes.

5 Q. Okay.

6 A. I believe he testified as an expert witness  
7 on glass, so he would have had to have been qualified.

8 Q. Do you know when he did this 216 testing?

9 A. No.

10 Q. Do you know whether it was in conjunction  
11 with the F-car?

12 A. I have no idea. I don't know.

13 Q. But yet not knowing all of that you still  
14 considered him an expert and he was assigned to the  
15 Green case as the technical expert in that -- in the  
16 discovery production?

17 A. Correct.

18 Q. You said in the privilege hearing that Joe  
19 Rice would have done a technical review of the  
20 documents. What does that mean, technical review of  
21 the documents?

22 A. He would have looked at the documents,  
23 evaluated the documents that were to be produced and  
24 made sure that they were responsive to the requests  
25 from a technical standpoint.

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1 the aerospace aero manufacturer because I cannot  
2 pronounce aero -- whatever.

3 Q. Okay.

4 A. You get -- you get the picture.

5 Q. Right.

6 Was any finite metal analysis done  
7 in the Green case?

8 A. I think there was -- there was computer  
9 modeling done on the F-car. So the answer would have  
10 been yes.

11 Q. Okay. How about, where did he get his  
12 experience on roof metal strength and fatigue?

13 A. I think that's all pretty much the same  
14 issue, but also I think at Fisher Body I think he was  
15 involved, if I remember correctly, again. I haven't  
16 memorized his resume', but I would -- I think he had  
17 some -- did some work on the 216 -- FMVSS 216, which --

18 Q. That's the rollover testing?

19 A. Roof strength testing.

20 Q. Roof strength. I'm sorry.

21 That's where you push --

22 A. Yes.

23 Q. -- the A-pillar down with a weight?

24 A. Not with a weight. With a platen.

25 Q. Okay. Tell me where he got his glass

1 Q. Okay. So before any documents or tests or  
2 videos were sent out to plaintiff, he would have  
3 reviewed them somewhere in the sequence of review?

4 A. It's my understanding, yes.

5 Q. Okay. Would he have the final review?

6 A. From --

7 Review goes on constantly.

8 Would he have had final review?

9 Counsel -- outside counsel would have also had an  
10 opportunity to look at what we would have produced, and  
11 if they had any independent -- if they had any  
12 question, they would have raised it. So from a  
13 standpoint of in-house review, Joe Rice would have had,  
14 I guess, arguably the final review.

15 Q. Okay. Did you speak to any other engineers  
16 about the document or production of documents?

17 A. I can't --

18 I know I spoke to Mr. Orlowski about  
19 the case.

20 Q. Okay. Mr. Orlowski was an outside expert;  
21 correct?

22 A. He was in-house retired from General Motors  
23 and so he was familiar with the discovery process, but  
24 did I speak to him about the discovery process in this  
25 case? I don't think so.

46 (Pages 178 to 181)

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<p>1 Q. Okay. Did you speak --</p> <p>2 A. I don't have any recollection of speaking to</p> <p>3 him.</p> <p>4 Q. Did you speak to any of the actual frontline</p> <p>5 design engineers who had been involved in the design or</p> <p>6 manufacture of the roof?</p> <p>7 A. I don't have any recollection. I may have</p> <p>8 --</p> <p>9 No, I don't have any recollection of</p> <p>10 speaking to any frontline -- as you call them,</p> <p>11 frontline engineers.</p> <p>12 Q. Wouldn't a frontline engineer be a more</p> <p>13 primary source of information pertaining to the design</p> <p>14 and development and manufacture of the T-roof?</p> <p>15 A. Not necessarily. I mean, that's -- that's</p> <p>16 what was so unique about the F-car project files.</p> <p>17 Q. What was so unique?</p> <p>18 A. The fact that engineering reports and notes</p> <p>19 would have been captured in the F-car project file. So</p> <p>20 a person who looked at -- it would have been -- I don't</p> <p>21 think it would have been that useful to talk to</p> <p>22 frontline engineers about the design of the T-top roof</p> <p>23 or any more important to do that than to talk to Mr.</p> <p>24 Rice.</p> <p>25 Q. So the frontline hands-on people would have</p>	<p>1 A. Not to my -- I don't know.</p> <p>2 Q. Okay. How about Charlyne Donahoe who</p> <p>3 substituted later as an authorized agent for Theresa</p> <p>4 Cerwin? Do you know who she is?</p> <p>5 A. No. The name's not ringing a bell.</p> <p>6 Q. Okay. Do the authorized agents who sign off</p> <p>7 on the verification such as Theresa Cerwin, do they</p> <p>8 actually get a full copy of the discovery to review?</p> <p>9 A. No.</p> <p>10 Q. Do they get any of it?</p> <p>11 A. They get the -- they get the responses,</p> <p>12 written responses and the -- they don't get the</p> <p>13 documents.</p> <p>14 Q. Okay.</p> <p>15 MR. DONOVAN: We need to stop</p> <p>16 because we only have two minutes left on the tape.</p> <p>17 Have to put in a new tape.</p> <p>18 VIDEOGRAPHER: Going off the record</p> <p>19 at 3:48 and 1 seconds p.m.</p> <p>20 (Short recess)</p> <p>21 VIDEOGRAPHER: We're back on the</p> <p>22 record at 3:52 and 50 seconds p.m.</p> <p>23 BY MR. DONOVAN:</p> <p>24 Q. We were talking about the verification</p> <p>25 process for interrogatories and document productions.</p>
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<p>1 been less valuable to you than Mr. Rice?</p> <p>2 A. I'm not saying less valuable. I don't see</p> <p>3 where they would be more valuable. It would be equal</p> <p>4 value.</p> <p>5 Q. Okay. Let's talk for a minute about the</p> <p>6 process of verifying answers to interrogatories.</p> <p>7 One of the sets of interrogatories</p> <p>8 is verified by a Theresa Cerwin as authorized agent.</p> <p>9 Do you know Theresa?</p> <p>10 A. She was an authorized agent. She's retired.</p> <p>11 Q. Okay. Do you know who she was authorized</p> <p>12 by?</p> <p>13 A. By the corporation.</p> <p>14 Q. Who? The authorization can't authorize,</p> <p>15 people have to authorize; right?</p> <p>16 A. You're right.</p> <p>17 Q. Okay. Who within the corporation would have</p> <p>18 authorized her?</p> <p>19 A. I don't know.</p> <p>20 Q. And what were her qualifications to be</p> <p>21 authorized as an agent?</p> <p>22 A. I don't know. She was already an authorized</p> <p>23 agent when I got here.</p> <p>24 Q. Okay. Did she have any kind of engineering</p> <p>25 background to your understanding?</p>	<p>1 In New Jersey we don't really talk</p> <p>2 about a verification, we usually talk about a</p> <p>3 certification. Were you aware of that?</p> <p>4 A. No.</p> <p>5 Q. Okay. Do you know where the verification as</p> <p>6 compared to a certification comes in?</p> <p>7 A. No.</p> <p>8 Q. Do you think there's a difference between</p> <p>9 the two? Did you ever look to see?</p> <p>10 A. Didn't know there was a difference.</p> <p>11 Q. Okay.</p> <p>12 A. I didn't know New Jersey had certification.</p> <p>13 I didn't know that.</p> <p>14 Q. You were starting to tell me what the</p> <p>15 authorized agent, I think we were talking about</p> <p>16 Theresa, would review before she would sign a</p> <p>17 verification.</p> <p>18 A. To the best of my recollection, going back</p> <p>19 19 years, there would have been the final draft</p> <p>20 response that was ultimately filed or served and with</p> <p>21 an indication by the responsible in-house lawyer that</p> <p>22 he or she review the documents -- or he or she review</p> <p>23 the responses and they were accurate and to the best,</p> <p>24 you know, best of their ability.</p> <p>25 Q. Okay. Privilege document 248 is an</p>

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1 inter-organizational memo from you, re Michael Green,  
2 to Theresa Cerwin, 4/28/92, and on it it says the  
3 following: The attached response has been approved by  
4 all appropriate divisions or staff(s) and has been  
5 reviewed for legal sufficiency by the undersigned. It  
6 is an order for your signature.

7 Was this the common way in which  
8 something which needed verification was forwarded to  
9 the appropriate authorized agent?

10 A. Yes.

11 Q. Was this a form of yours?

12 A. This was a corporate form.

13 Q. Okay. And you would have sent that document  
14 with whatever the response was being referenced in  
15 there to Theresa or whoever?

16 A. Correct.

17 Q. And then would you -- would you go with  
18 that? Would she send it back to you? How would you  
19 get the verification back because the next document is  
20 sending the executed verification to Mr. Murray the  
21 same day, April 28th, 1992?

22 A. It would have probably been returned to my  
23 administrative assistant and who would have then  
24 forwarded it on to Mr. Murray.

25 Q. Okay. And the verification which Theresa

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1 to the -- supplemental answers to the plaintiff's  
2 interrogatories as referred here.

3 Q. They are the -- I'm sorry. You used the  
4 words approved --

5 A. Right.

6 Q. -- authorized.

7 A. They've been approved by all the divisions  
8 and staffs and legal -- for legal sufficiency by the --  
9 by Theresa.

10 Q. Approved for legal sufficiency. Is that  
11 what the verification means?

12 A. I believe so.

13 Q. Okay.

14 A. I'm not really an expert on the  
15 verifications.

16 Q. Okay. Is it -- is contained in there any  
17 type of certification or representation or verification  
18 that the answers are accurate to the best of General  
19 Motors' knowledge?

20 A. I think that assumes they are.

21 Q. So you think that's an assumption when you  
22 sign a verification.

23 A. Right.

24 Q. Okay. Is it -- is it also one of the  
25 assumptions that a verification includes an

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1 signed on April 28th, 1992 says: Comes now, Theresa L.  
2 Cerwin, being first duly sworn, deposes and says that  
3 she is authorized pursuant to applicable law.

4 What applicable law are we talking  
5 about there? Is that Michigan law? Is that federal  
6 law? Is that the state of the jurisdiction which the  
7 case is pending law? Is it --

8 A. I think it's Michigan law.

9 Q. Do you have any references or citations that  
10 you know of to that --

11 A. No.

12 Q. -- law?

13 A. No.

14 Q. Do you know whether there is a Michigan law  
15 on authorization for signing or verifying discovery  
16 responses?

17 A. Yeah, I think there is. I couldn't give  
18 that to you off the top of my head.

19 Q. Okay. And what does it mean to be -- it  
20 says, and the foregoing answers, which was supplemental  
21 answers to plaintiff's interrogatories, are verified on  
22 behalf of General Motors.

23 What does it mean to be verified as  
24 used in that sentence?

25 A. That these are approved authorized answers

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1 acknowledgment or a certification that the discovery  
2 that's provided is as a result of a complete and  
3 thorough search of all the applicable documents so as  
4 to respond?

5 A. The --

6 What's being verified?

7 Q. Um-hum.

8 A. The -- the responses?

9 Q. Um-hum.

10 A. Yes. That the parties -- appropriate  
11 parties all got together and responded to the best of  
12 their ability that these responses are true and  
13 accurate.

14 Q. And complete?

15 A. And complete.

16 Q. And that a thorough search has been made  
17 for -- in all the places where one might reasonably  
18 expect responses to discovery to be had?

19 A. Are we talking about the verification for  
20 the answers to the interrogatories and requests to  
21 produce or are we talking about the search? I think  
22 we're mixing apples and oranges here.

23 Q. I'm asking whether the verification goes so  
24 far as to be a representation or certification that  
25 there has been a thorough and complete search of all of



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1 General Motors' records where reasonably -- where one  
2 might reasonably expect to find documents responsive to  
3 the discovery demand.

4 MR. VINES: Before you answer, the  
5 verification speaks for itself.

6 MR. DONOVAN: Well, I didn't hear  
7 it speaking.

8 MR. VINES: Well, I mean, the face  
9 of the document is what it is and, you know, no amount  
10 of questioning of him is going to expand what the  
11 language in the document says or doesn't say.

12 MR. DONOVAN: Well, I think it's  
13 important to know when one takes an oath what they're  
14 taking an oath to say, and he's the one that gave it to  
15 her and said it was okay to sign. So she should know  
16 what it is that he thinks she's signing.

17 MR. VINES: You know, you've made  
18 objections yourself before. This is delving into lots  
19 of different legal issues as to what verifications like  
20 this mean and I'm not sure he's in a good position on  
21 his own to answer it and so I would go back to what I  
22 said originally. The document speaks for itself and is  
23 grounded in whatever law supports it or doesn't support  
24 it.

25 MR. DONOVAN: Okay. Are you

1 apply to this.

2 A. Absolutely.

3 Q. And you had local counsel who I assume you  
4 hired because you assumed they were familiar with the  
5 local rules of New Jersey.

6 A. True, and these were sent to our local  
7 counsel, received and accepted, and this verification  
8 was served. Assume, therefore, that 19 years ago this  
9 met all the requirements of the New Jersey law,  
10 otherwise we would have been told otherwise and it  
11 would have come back and we would have made  
12 modifications or alterations to meet the law of the  
13 state of New Jersey.

14 Q. Are you assuming that or --

15 A. I can't speak to any more than that.

16 Q. Are you assuming that --

17 A. No.

18 Q. -- or do you know what the law of the state  
19 of New Jersey requires?

20 MR. VINES: I'm not going to  
21 instruct him not to answer, but I think he's answered  
22 just about everything you've asked him about that to  
23 the extent of his ability.

24 BY MR. DONOVAN:

25 Q. Are you assuming that this was in compliance

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1 instructing him not to answer my question?

2 MR. VINES: No, I'm not instructing  
3 him not to answer your question.

4 BY MR. DONOVAN:

5 Q. Okay. Do you remember my question?

6 A. It says on the face of the document that the  
7 foregoing answers are verified.

8 You're trying to -- you're saying  
9 that not only are the foregoing answers verified, but  
10 you're taking it a step farther to indicate that  
11 somehow there was search -- you're taking it to the  
12 search mode. The foregoing answers were verified.

13 Q. So all that means is that they've been  
14 approved for legal sufficiency.

15 A. If that's what the law in New Jersey is. I  
16 don't know what the law in New Jersey is, what a  
17 verification means in New Jersey.

18 Q. Well, you understood that you were sending  
19 these to New Jersey; right?

20 A. Yes, sir.

21 Q. And you understood that this case was venued  
22 in New Jersey; correct?

23 A. Correct.

24 Q. And you understood that the applicable rules  
25 of court which govern the courts in New Jersey would

1 with the laws of the state of New Jersey or do you know  
2 that from some type of outside -- either by reviewing  
3 the law yourself or someone telling you that this  
4 complies?

5 A. I mean, we've -- I'm taking -- I'm taking  
6 the kind of logical approach that you took earlier.  
7 You know, on Green I you got 3,000 documents, on Green  
8 II you got 5,000 documents, therefore the math is real  
9 simple that there were 2,000 other documents.

10 The verification went out. The  
11 verification was approved and went to our local counsel  
12 who was knowledgeable in New Jersey law. Therefore I  
13 think it's a reasonable conclusion that this  
14 verification met all requirements of New Jersey law and  
15 otherwise we would have -- there would have been  
16 something in the record, obviously, that we would have  
17 reacted to.

18 Q. Okay. Well, why don't you try answering my  
19 question. My question was, did you do any independent  
20 legal research to satisfy yourself that this  
21 verification complied with New Jersey law?

22 A. That wasn't your other question.

23 Q. Well, I'm asking it now.

24 A. The answer --

25 MR. VINES: Hang on a second.

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1 I think he's answered that he relied  
2 on outside qualified New Jersey counsel on him -- on  
3 this issue, and it's kind of a stretch to ask him if he  
4 did his own independent legal review of that legal  
5 advice, and that starts to get into privilege issues  
6 and lawyer agency stuff that I just don't think is  
7 proper to ask him about.

8 MR. DONOVAN: Okay.

9 BY MR. DONOVAN:

10 Q. Did you do any independent legal research to  
11 determine whether this verification was in compliance  
12 with New Jersey law?

13 MR. VINES: Just answer it.

14 THE WITNESS: I didn't see any  
15 necessity to do it since our local counsel from New  
16 Jersey had no problem with the document.

17 BY MR. DONOVAN:

18 Q. So the answer to my question is no?

19 A. I don't remember.

20 Q. You don't remember whether you ever did any  
21 legal research --

22 A. Right. Right.

23 Q. -- to determine the sufficiency of the  
24 verification under New Jersey law?

25 A. I just -- I don't remember, but the fact is

1 each state is different and I rely on the local  
2 counselor or counsel of that state to advise me if we  
3 need a verification or not.

4 Q. Okay. Do you ever certify the answers to  
5 interrogatories or the requests for production of  
6 documents as being true and accurate and complete?

7 A. The responses and the production of  
8 documents?

9 Q. Yes.

10 A. No.

11 Q. Okay. Does Joe Rice ever certify the  
12 interrogatories or demand for production of documents  
13 as to their truth and accuracy and completeness?

14 A. Is certification a term of law? I mean,  
15 what does that mean?

16 Q. I'm sorry?

17 A. What does certification mean, or certify  
18 that they're -- I mean, you keep asking cer- -- what --  
19 is that a New Jersey term, a legal term that I'm not  
20 familiar with? I don't understand what --

21 Q. I didn't know you were not familiar with it.  
22 I thought it was a legal term not indigenous just to  
23 New Jersey, but --

24 A. Well, verification is.

25 Q. Okay. Does Mr. --

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1 that our local counsel had no problem with the  
2 verification, therefore that --

3 I may have done legal research, I  
4 don't remember, but I'm relying on the fact that our  
5 local counsel had no problem with it, therefore I had  
6 no problem with it and I assumed it complied with the  
7 requirements of New Jersey law.

8 Q. Did you ever have a discussion with local  
9 counsel as to the sufficiency of the verification?

10 A. That -- the answer to that is no, and the  
11 fact that I didn't supports my position that I believe  
12 that the verification was proper and -- under New  
13 Jersey law. If there was some problem --

14 Q. If you just said no, we'd be done with this  
15 questioning already.

16 Do you provide a verification in all  
17 of the cases you're handling in various states or is  
18 there a difference or --

19 A. There's a difference.

20 Q. Back in -- and I'm talking back in late '80s  
21 and the early '90s.

22 A. I believe -- best of my recollection it was  
23 different. Some states require it, some don't. Some  
24 require only further interrogatories, some require RFPs  
25 and interrogatories and requests to admit. Pretty much

1 A. Are we talking about verification or  
2 certification?

3 Q. I'm not looking to argue with you, Mr.  
4 Ziolkowski.

5 MR. VINES: Let him ask the  
6 questions, then answer them.

7 BY MR. DONOVAN:

8 Q. Does Joe Rice ever sign certifications or  
9 verifications to interrogatories and demand for  
10 production of documents?

11 A. Not to my knowledge.

12 Q. Okay. Is it always done by the court  
13 authorized agent whoever that may be at a particular  
14 point in time?

15 A. Correct.

16 Q. Is it always a verification rather than any  
17 other form of swearing or affirming?

18 A. The truthfulness of the answers?

19 Q. Yes.

20 A. It's my understanding it's called  
21 verification.

22 Q. The word truthfulness is not used in there.  
23 You're saying that that's subsumed under the word  
24 verified? It means that they're truthful?

25 A. Depending on what the definition of

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1 verification is in certain -- in each and every state.  
2 I assume truthfulness is part of it.  
3 Some states may have language that talk about what a  
4 verifi- -- what the definition of verification is or  
5 not.

6 I would -- I would think that it  
7 would be -- also be the truthfulness of the responses,  
8 the written responses.

9 Q. Were you involved in the appellate process?

10 A. Yes.

11 Q. Okay. Did you have any responsibility for  
12 reviewing the appellate brief which was going to be  
13 filed in New Jersey?

14 A. Yes.

15 Q. Okay. Did you author any of it or was it  
16 simply a review capacity?

17 A. Just reviewed it.

18 Q. Who is Mr. Poland?

19 A. He was a lawyer for Kirkland & Ellis, if I'm  
20 not mistaken.

21 Q. Is he an appellate attorney, do you know?

22 A. He's an attorney for Kirkland & Ellis. I  
23 don't know if he's an appellate attorney or not.

24 Q. Okay. Did you author any of the points of  
25 the brief?

1 remember if I --

2 I probably was told about it, but --

3 No. I think the answer would be no.  
4 I wasn't involved in the hiring of them.

5 BY MR. DONOVAN:

6 Q. Okay. Do you know whether you contributed  
7 to or what the source of the following paragraph was,  
8 and this I'm reading from page 38 of General Motors'  
9 brief filed in the Green appeal.

10 MR. VINES: Excuse me. Could you  
11 give us a second to pull it out so we can have it?

12 MR. DONOVAN: Sure.

13 MR. WEISS: Did you say page 38?

14 MR. DONOVAN: Yes. It's --

15 MR. VINES: Are you going to do more  
16 than one page or --

17 MR. DONOVAN: -- C. You good?

18 MR. VINES: We're good. Thanks.

19 MR. DONOVAN: Okay.

20 BY MR. DONOVAN:

21 Q. The topic under C, as you can see, is  
22 plaintiff failed to sustain his prima facie burden of  
23 proving a safer, practicable alternative design to the  
24 Camaro T-roof. Do you see that?

25 A. Yes, I do. Yes.

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1 A. No.

2 Q. Okay. Did you provide any language that was  
3 incorporated into the brief?

4 A. No.

5 Q. Did you suggest any of the arguments which  
6 were to be made in support of the appeal?

7 A. I'm sorry. Could you ask me that again?

8 Q. Yes. Did you suggest any of the arguments  
9 which were made in the appeal?

10 A. No.

11 Q. No?

12 Who did that?

13 A. I believe it was Mr. Langan.

14 Q. You also hired McElroy Deutsch, a New Jersey  
15 firm?

16 A. I believe ESIS hired McElroy Deutsch.

17 Q. Who hired?

18 A. The -- ESIS, the -- or Royal Insurance, the  
19 insurance carrier.

20 Q. Okay. Were you involved in any of that  
21 hiring?

22 MR. VINES: "Any of that" meaning of  
23 McElroy Deutsch?

24 MR. DONOVAN: Yes.

25 THE WITNESS: I -- well, I don't

1 Q. Okay. Skipping the first paragraph. We're  
2 talking about -- we're talking about Don Phillips'  
3 alternative design. Do you understand that to be what  
4 we're talking about here?

5 A. Yes.

6 Q. All right. And the paragraph says: One  
7 proposal was a hypothetical roof design propounded by  
8 Phillips that would incorporate a channel connecting  
9 the tops of the A and B pillars. But Phillips' naked  
10 suggestion of this design concept and its claimed  
11 crashworthiness did not satisfy the first element of  
12 the Huddell analysis. The proposed design is simply an  
13 imagined concept that exists nowhere but in the mind of  
14 plaintiff's expert. No vehicle has ever been produced  
15 or sold using this design; Phillips never conducted any  
16 testing of this design; and Phillips never even  
17 produced any engineering drawings showing what his  
18 proposed design would look like. Continuing at page  
19 39. His trial opinion that this supposed alternative  
20 is a safer and more crashworthy design than the  
21 Camaro's T-roof was, accordingly, an inadmissible net  
22 opinion that was not competent evidence to prove that  
23 this alternative roof design was safer than the one  
24 used on the Camaro.

25 And my question was, do you know

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1 where that language came from or did you contribute to  
2 it?

3 A. No. It was in the -- it was in the brief  
4 when I reviewed it.

5 Q. Okay. Were you in agreement that that was  
6 one of the points which should be raised on appeal?

7 A. Yes.

8 Q. Okay. Do you agree that that point was  
9 belied by the A through H documents?

10 MR. VINES: Just so I can make an  
11 objection for the record, I'm not instructing the  
12 witness not to answer, but it's -- any inferences to be  
13 drawn in connection to the tort claims that you've made  
14 in this suit arising from this brief we believe are  
15 covered by the litigation privilege, and we reserve the  
16 right to argue that later on, but you can ask the  
17 witness your questions.

18 MR. DONOVAN: I don't think fraud is  
19 covered by the litigation privilege, but we'll see.

20 MR. VINES: We can debate that  
21 later, but I wanted to make my objection on the record.

22 THE WITNESS: I'm sorry.

23 BY MR. DONOVAN:

24 Q. There was a question.

25 A. I --

1 To answer your question, I don't

2 remember having any conversation with anyone.

3 Q. Do you remember there being any type of  
4 concern, investigation, exchange of correspondence,  
5 anything about that?

6 A. You filed a supplemental brief with the  
7 court of appeals. Does that --

8 Q. No. I'm asking you. You have these  
9 documents, A through H, which we've talked about all  
10 day --

11 A. Okay.

12 Q. -- and you said, you know, at least with  
13 respect to C through H should have been provided, okay,  
14 and you've agreed with me that this -- those documents  
15 belie the contention that this was a figment of Mr.  
16 Phillips' imagination, it had never been tested or had  
17 never been considered. Okay.

18 Was there any discussion about that  
19 and what to do about the position you had taken in the  
20 appellate division of New Jersey Supreme Court?

21 MR. VINES: Object to the form of  
22 that question.

23 THE WITNESS: Not that I remember.

24 BY MR. DONOVAN:

25 Q. Okay. There was no strategy planned on how

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1 Could you repeat it, please?

2 Q. Yes.

3 When you received the A through H  
4 document, do you agree that that contention was belied  
5 by the presence of those documents?

6 A. A through H.

7 Q. Yes.

8 A. Or C through H.

9 Since the documents A through H, if  
10 you have it handy, I think some of them talk about a  
11 roof that has kind of a tantamount of a hardtop roof.  
12 So if you're talking about that being an alternative  
13 design roof, then yes. It was apparently an  
14 alternative design that may have been considered for  
15 the F-car.

16 Q. Okay.

17 A. Not as an alternative to the T-top. Not as  
18 an improvement for the T-top.

19 Q. Okay. After the Court permitted the  
20 supplementation of the record to include the A through  
21 H documents, were you involved in any conversations  
22 with anybody with respect to what to do about GM's  
23 assertion in point -- in that point of their brief?

24 A. I don't remember having any conversation  
25 about --

1 to deal with this that you were involved in?

2 A. I think the only thing that I -- the only  
3 thing I can remember is the -- we did not raise this  
4 issue in front of the New Jersey Court of Appeals, that  
5 -- that they failed -- that plaintiffs failed to  
6 sustain a prima facie burden of proving a safer,  
7 practical alternative design.

8 Q. Okay. Was there a discussion that led to  
9 that strategy or that decision?

10 A. I don't remember.

11 Q. You don't remember. Okay.

12 Plaintiff had asserted that General  
13 Motors, in their brief in support of the motion to  
14 supplement, that General Motors had committed a fraud  
15 on the courts of the state of New Jersey by the filing  
16 of this brief and you're telling me you don't remember  
17 whether there were any discussions about that?

18 A. Before the -- before the argument in the --  
19 oh, I see. Okay. When we got -- after we had your  
20 supplemental.

21 Q. Right.

22 I assume General Motors doesn't get  
23 accused of fraud everyday; right?

24 A. That's correct.

25 Q. That would be something unusual?

52 (Pages 202 to 205)

Page 202	Page 204
<p>1 A. Yes.</p> <p>2 Q. And yet you can't recall any conversations</p> <p>3 about it? Anybody say?</p> <p>4 A. I did have a conversation with Andy</p> <p>5 Langan --</p> <p>6 Q. Okay.</p> <p>7 A. -- and asked him what he thought, what he</p> <p>8 made of this motion and the allegations raised.</p> <p>9 Q. Okay.</p> <p>10 A. And he --</p> <p>11 Q. Why don't you tell me about that.</p> <p>12 A. Well, best I can remember is that he said</p> <p>13 that he thought these were false and frivolous</p> <p>14 allegations.</p> <p>15 Q. Okay.</p> <p>16 A. Something of that effect.</p> <p>17 Q. And did you have any discussion after the</p> <p>18 appellate division decided to supplement the record</p> <p>19 with him?</p> <p>20 A. No.</p> <p>21 Q. Okay. Did you have any conversation at all</p> <p>22 with respect to General Motors withdrawing this point</p> <p>23 of their brief when they started to argue before the</p> <p>24 New Jersey appellate division?</p> <p>25 A. No.</p>	<p>1 hearing in the selection of experts?</p> <p>2 A. I don't remember.</p> <p>3 Q. Do you know what I'm talking about when I</p> <p>4 say a remand hearing?</p> <p>5 A. Vaguely. Can you refresh my recollection?</p> <p>6 Q. Okay. You didn't know that the appellate</p> <p>7 division remanded the case back to the trial division</p> <p>8 so a determination can be made as to whether the jury</p> <p>9 appropriately discounted the 13 million dollars and</p> <p>10 future medicals to present value?</p> <p>11 A. Yes.</p> <p>12 Q. Does that refresh your recollection?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Were you involved in the selection of</p> <p>15 experts for that?</p> <p>16 A. I probably was, but I don't have an</p> <p>17 independent recollection.</p> <p>18 Q. Do you have any independent of what went on</p> <p>19 during that period at all?</p> <p>20 A. In -- about the case?</p> <p>21 Q. Yes. Anything you --</p> <p>22 A. Yeah. I believe the Court remanded -- or we</p> <p>23 had a remittitur of some multimillion or several</p> <p>24 hundred thousands of dollars, I believe, and there was</p> <p>25 some favorable ruling for us.</p>
Page 203	Page 205
<p>1 Q. Did you --</p> <p>2 Do you know Brett Cavanaugh? Brett</p> <p>3 Cavanaugh.</p> <p>4 A. No.</p> <p>5 Q. Do you know that Brett Cavanaugh was the</p> <p>6 attorney who argued the appeal of Green versus General</p> <p>7 Motors before the Superior Court of New Jersey,</p> <p>8 Appellate Division?</p> <p>9 A. I don't remember that.</p> <p>10 Q. So then I guess you wouldn't remember</p> <p>11 whether you ever spoke to him or not.</p> <p>12 A. (No response).</p> <p>13 Q. I didn't hear an answer. I'm sorry.</p> <p>14 A. I didn't know if that was a question. It</p> <p>15 seemed more like a statement. Was that a question?</p> <p>16 Q. Did you ever speak to Mr. Cavanaugh? Do you</p> <p>17 recall ever speaking to him?</p> <p>18 A. No, I don't remember.</p> <p>19 Q. Do your duties and responsibilities as the</p> <p>20 in-house counsel responsible for a case extend to the</p> <p>21 appellate stages of the case?</p> <p>22 A. Sometimes.</p> <p>23 Q. Okay. Did they in Green?</p> <p>24 A. Yes.</p> <p>25 Q. Were you at all involved in the remand</p>	<p>1 Q. On damages.</p> <p>2 A. On damages.</p> <p>3 Q. Yeah. The Court said we were not entitled</p> <p>4 to prejudgment interest on future medicals.</p> <p>5 A. Okay. I mean, I don't remember the</p> <p>6 specifics.</p> <p>7 Q. But we were entitled --</p> <p>8 But you were not entitled to a</p> <p>9 credit for the settlement with the bus company.</p> <p>10 A. Well, I don't -- I don't remember.</p> <p>11 MR. VINES: Is that a question?</p> <p>12 THE WITNESS: Yeah. I don't</p> <p>13 remember.</p> <p>14 MR. DONOVAN: Well, I'm trying to</p> <p>15 see if any of this rings a bell for Mr. Ziolkowski so I</p> <p>16 can answer his question.</p> <p>17 THE WITNESS: The answer is no.</p> <p>18 BY MR. DONOVAN:</p> <p>19 Q. If you have no recollection of this period,</p> <p>20 then --</p> <p>21 A. The answer's no.</p> <p>22 Q. Okay.</p> <p>23 A. It doesn't ring a bell.</p> <p>24 Q. You don't recall anything you did or didn't</p> <p>25 do during the remand stage of the case?</p>

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1 A. Other than the fact we argued it and got a  
2 favorable ruling, that's all.

3 Q. In the remand?

4 A. On the damages part of it.

5 Q. By Judge Fuentes?

6 A. I believe so.

7 Q. Okay. Do you know what that favorable  
8 ruling was?

9 A. I mean, it was a money issue.

10 Q. And how did that money issue benefit General  
11 Motors?

12 A. We had to pay less.

13 Q. And what was that as a result of?

14 A. I don't remember.

15 Q. Okay.

16 MR. DONOVAN: Okay. I'm done.

17 MR. VINES: Done?

18 MR. DONOVAN: You can ask your  
19 questions now.

20 MR. VINES: I'd like to go off the  
21 record for a few minutes to get my notes together.

22 MR. DONOVAN: Sure.

23 VIDEOGRAPHER: Going off the record  
24 at 4:24 and 43 seconds p.m.  
25 (Recess)

1 long-standing relationship with each of those law  
2 firms?

3 A. They have through the last 19 years that  
4 I've been here, but also prior to my coming they had a  
5 long working relationship with both -- all three firms.  
6 They were already approved counsel.

7 Q. And what's your view as to the reputation of  
8 those law firms?

9 A. Fine lawyers. Fine law firms. They were --  
10 they do our work, other manufacturers' defense work.  
11 They have a very good reputation.

12 Q. How extensively do you delegate the  
13 day-to-day tasks in litigation to those law firms?

14 A. Quite extensively. I rely on them for their  
15 advice, their support, their knowledge of the issues,  
16 and working together as a team we try to represent and  
17 defend General Motors to the best of our ability.

18 Q. And does that extensive delegation relate to  
19 all aspects of the lawsuits or just certain aspects?

20 MR. DONOVAN: Objection to the form  
21 of the question. I don't think that's what he  
22 testified to.

23 THE WITNESS: The -- all aspects of  
24 litigation. I don't delegate every -- all my  
25 responsibility, if that's what the question is.

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1 VIDEOGRAPHER: We're back on the  
2 record at 4:37 and 52 seconds p.m.

3 EXAMINATION BY MR. VINES:

4 Q. Okay. Mr. Ziolkowski, let me ask you just a  
5 few questions about your relationship with the law  
6 firms you worked with in the Green case.

7 Can you tell me something about  
8 those law firms, how you came to work with them, what  
9 the relationship was with General Motors generally?

10 A. My involvement with Kirkland & Ellis  
11 primarily grew out of a relationship when I was working  
12 on rollover roof crush cases.

13 Rumberger & Kirk I believe -- I  
14 don't remember any involvement I had with them prior to  
15 doing rollover roof crush cases. Rumberger & Kirk  
16 worked on two of my first three trials, so I got to  
17 know and familiarize myself with them quickly early on  
18 in my career.

19 Tom Tansey and that firm, again, I  
20 believe the Green case may have been my first contact  
21 with them, although I'm not sure if they had any  
22 multi-piece or tire and wheel mismatch case. They may  
23 have had one of those. I may have dealt with them  
24 prior to the Green case.

25 Q. Now, does General Motors have a

1 BY MR. VINES:

2 Q. No. I'm sorry. I mean with respect to  
3 discovery versus trial versus appellate work. Do they  
4 play a heavy role in each of those phases of  
5 litigation?

6 A. Oh, absolutely. From discovery, as we've  
7 talked about today, there was -- they are intimately  
8 involved in the discovery process along with the  
9 coordinators and the engineers. From a trial  
10 standpoint they are the go-to people that try the case.  
11 In the appellate work, again, their knowledge of the  
12 law and the venue we're in, I rely on them quite  
13 extensively.

14 Q. And to your knowledge in the processing of  
15 discovery materials, when materials go from firm to  
16 firm, do they coordinate that themselves or do you get  
17 heavily involved in the firm to firm transmittal of  
18 discovery materials?

19 MR. DONOVAN: Object to the form of  
20 the question.

21 THE WITNESS: There is an  
22 involvement from --

23 My involvement in that type is to  
24 make sure that all the avenues are covered, that  
25 everything is -- that the trans -- that the transfer of

54 (Pages 210 to 213)

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<p>1 responsibility is seamless and that they respond and 2 that each one has their own -- has knowledge of their 3 own responsibilities. So, again, working as a team who 4 are to reach a common goal.</p> <p>5 BY MR. VINES:</p> <p>6 Q. And do you typically dictate to them how to 7 do each discrete task involved in the litigation?</p> <p>8 MR. DONOVAN: Object to the form of 9 the question.</p> <p>10 THE WITNESS: No. There's not 11 enough -- no, I do not do that. I rely on them, their 12 expertise, and, again, we try to get the job done.</p> <p>13 BY MR. VINES:</p> <p>14 Q. Would you say that the workload involved in 15 litigation requires that level of delegation?</p> <p>16 MR. DONOVAN: Object to the form of 17 the question. He's not an expert in delegation of 18 litigation responsibilities.</p> <p>19 MR. VINES: Actually I think he 20 probably is, but I note your objection.</p> <p>21 MR. DONOVAN: Well, no. His 22 viewpoint is necessarily one sided, necessarily General 23 Motors.</p> <p>24 THE WITNESS: Well, I believe that 25 my --</p>	<p>1 BY MR. VINES:</p> <p>2 Q. Do you find that it's frequently the case 3 that you can rely on the representation those outside 4 firms make to you about how they've handled your legal 5 work?</p> <p>6 A. I have no reason not to rely on their 7 representations, their -- we've discussed that some of 8 the firms, our local counsel, they know the law, they 9 know the issues much better than I do, so I, of course, 10 rely on them.</p> <p>11 Q. And do you typically double check the 12 day-to-day legal work those law firms do on your behalf 13 or GM's behalf?</p> <p>14 A. No, I do not. I mean, I have confidence in 15 them, they do the work, they have experience and I 16 accept it, that they have -- we have delegated 17 responsibilities and everybody picks up an oar and we 18 row in together.</p> <p>19 Q. Okay. Now, let me turn to asking you about 20 the specific claims that the plaintiff has made in this 21 case, the first being that an allegation that General 22 Motors fraudulently concealed materials that should 23 have been disclosed in discovery to the plaintiff in 24 the Green litigation, and let me first ask you that as 25 a lawyer working for GM on the Green case, do you have</p>
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<p>1 Could you repeat that question?</p> <p>2 BY MR. VINES:</p> <p>3 Q. Yeah, if I can remember the way I asked it. 4 I think it was does the level of the workload involved 5 in product liability litigation require that level of 6 delegation to these outside law firms?</p> <p>7 MR. DONOVAN: And are you limiting 8 that to his experience with General Motors or are you 9 talking about that as a general absolute rule for every 10 law firm and every products liability case in the 11 entire universe?</p> <p>12 MR. VINES: No. In his experience 13 at General Motors.</p> <p>14 MR. DONOVAN: Okay.</p> <p>15 THE WITNESS: My experience at 16 General Motors, workload requires some delegation of 17 responsibility in all facets of the case, the 18 preparation, the trial and the -- of course the trial 19 and the appellate work.</p> <p>20 My knowledge of other car 21 manufacturers is that there is some similar type of 22 delegation of responsibility, but as far as my 23 practice, I believe that there is room for other points 24 of view, other approaches, other people's input and 25 it's requested and in some instances required.</p>	<p>1 any personal knowledge or do you have an opinion as to 2 whether anyone working at GM or working as an agent for 3 GM withheld, altered, destroyed, otherwise hid 4 documents from the plaintiff in the Green case?</p> <p>5 MR. DONOVAN: I object to the 6 question with respect to the opinion evidence. I have 7 no problem with respect to the factual.</p> <p>8 THE WITNESS: There is -- I have no 9 knowledge of anyone intentionally destroying, altering 10 or intentionally not producing documents, and it's my 11 opinion that that wasn't done in this case.</p> <p>12 BY MR. VINES:</p> <p>13 Q. Are you aware of anyone in the chain of 14 command giving anyone instructions to withhold, alter, 15 destroy, hide documents, et cetera?</p> <p>16 A. No. Absolutely not.</p> <p>17 Q. Okay. Has anyone either in this case or 18 otherwise in your experience in the GM law department 19 ever told you to commit any of that kind of conduct?</p> <p>20 A. Never.</p> <p>21 Q. Let me next say to you that one of the other 22 of the three claims in the case is for negligent 23 concealment of the documents that we've discussed 24 today, and, first of all, sort of the same premise, do 25 you have any firsthand knowledge that anyone at General</p>

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1 Motors or any of the General Motors agents in this  
2 matter negligently withheld, altered, destroyed or  
3 otherwise kept plaintiff from getting the documents  
4 owed in discovery?

5 A. No. Absolutely not.

6 Q. Okay. Do you have any knowledge or opinion  
7 as to whether General Motors' systems for producing  
8 materials in discovery is competently designed and  
9 competently executed?

10 MR. DONOVAN: Object to the form of  
11 the question with respect to opinions.

12 THE WITNESS: It is --

13 MR. DONOVAN: Let me just -- is your  
14 question with respect to how it existed back --

15 MR. VINES: I'm sorry, yeah, how it  
16 existed --

17 MR. DONOVAN: -- in 1989, '90?

18 MR. VINES: Yes. Fair comment.

19 BY MR. VINES:

20 Q. Not today. How did it exist back in the  
21 time of the Green litigation?

22 A. It was very complete and very thorough with  
23 good teamwork, coordination amongst all parties relying  
24 on people's expertise, relying on the expertise of the  
25 subject matter, and expertise of handling other cases.

1 Q. And no one ever asked you to purge any  
2 documents related to the Green litigation?

3 A. No one ever asked me to.

4 Q. Okay. And, finally, let me ask you about  
5 the claim that's been made with respect to civil RICO,  
6 a claim under the New Jersey civil RICO statute. And  
7 let me represent to you that that statute and the  
8 claims made allege that an enterprise was engaged in by  
9 General Motors and its agents and that members of the  
10 General Motors law department associated with that  
11 enterprise and that that enterprise through a pattern  
12 of racketeering activity injured the plaintiff, Mr.  
13 Green, specifically through the commission of  
14 fraudulent concealment of the documents.

15 Now, having represented that to you,  
16 do you have any knowledge or opinion as to whether  
17 General Motors or any of its agents in the litigation  
18 engaged in any of that sort of behavior?

19 A. No.

20 MR. DONOVAN: Object to the form of  
21 the question. It improperly characterizes plaintiff's  
22 cause of action under RICO. The question is not  
23 specific with respect to New Jersey RICO. This witness  
24 is not an expert in New Jersey RICO.

25 BY MR. VINES:

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1 So there was a very good working relationship, a very  
2 thorough, complete process set up to locate and produce  
3 responsive information.

4 Q. Now, given the state of technology at the  
5 time and the various sources of the documents involved  
6 in the Green production, do you have knowledge or a  
7 belief as to whether General Motors and its agents  
8 acted reasonably in attempting to get responsive  
9 materials to the plaintiff in the Green case?

10 MR. DONOVAN: Object to the form of  
11 the question, calls for an opinion and it calls for an  
12 expert's opinion.

13 THE WITNESS: I would say, based on  
14 my understanding of what went on, the work that was  
15 done by all parties, we did the best -- we tried to  
16 accomplish the goal and produce all documents that were  
17 requested.

18 BY MR. VINES:

19 Q. At the time of the Green litigation did you  
20 have any knowledge that General Motors had a process or  
21 a system in place for purging documents that would be  
22 harmful to the company in litigation?

23 A. There was no such purging of harmful  
24 documents. There was no plan, no policy, no process to  
25 do that.

1 Q. Okay. Let me finish up by asking, your view  
2 in a lay capacity of the term racketeering and fraud  
3 and enterprises convened to commit fraud, in that  
4 capacity do you have any knowledge of any conduct that  
5 would fit those characteristics?

6 A. No.

7 MR. DONOVAN: Again, object to the  
8 form of the question.

9 MR. VINES: That's all I have.  
10 RE-EXAMINATION BY MR. DONOVAN:

11 Q. Your opinion or your view of the world that  
12 GM did not engage in negligent concealment of  
13 documents, that would only apply to those people's  
14 conduct which you had observed or had been involved in  
15 supervising; isn't that true?

16 A. The answer is yes.

17 Q. Okay.

18 A. To --

19 Q. You can't tell me what --

20 A. But there is no policy or there was no  
21 process or there was no -- ever any inference or  
22 suggestion to destroy documents or alter documents or  
23 not produce documents.

24 Q. Okay. You have no idea as a matter of fact,  
25 not opinion, not inference, not assumption, that



56 (Pages 218 to 221)

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1 somebody may have found the A through H documents and  
2 for whatever reason decided not to produce them, do  
3 you?

4 A. Correct.

5 Q. Okay. Again, with respect to your opinion  
6 that General Motors did not engage in fraudulent  
7 concealment of the documents -- or did I do that  
8 already? Did I do -- of negligent concealment of the  
9 documents, again, this can only be based upon the  
10 people that were either under your control and that you  
11 were observing and you were handling; correct?

12 A. Correct.

13 Q. You can't speak for every single person who  
14 may have in some way, shape, or form come in contact  
15 with these documents, can you, as a matter of fact, not  
16 opinion or inference or assumption?

17 A. Well, I could speak to the fact that the  
18 documents were not produced, so, therefore, I would  
19 take it to mean that the documents were not found  
20 because, as I indicated, there was no intent or attempt  
21 to destroy, alter, or not produce documents.

22 Q. Does GM have a sign-out system for when they  
23 look at documents? Do you have to like, you know, like  
24 a library, if you take something out, you know, sign it  
25 out or if you're going to review something, you have to

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1 indicate that you were there and reviewed it? I'm  
2 talking back in late 80s, early 90s.

3 A. You mean once it's been collected as far as  
4 discovery process or documents that are in the  
5 corporation?

6 Q. I'm talking -- yeah. I'm talking about  
7 documents in the corporation. You assign me to go look  
8 at Fisher Body for documents related to whatever. Do I  
9 have to like sign in? Do I have to like get  
10 authorization? Do I need a pass? Do I need to, you  
11 know, stick my retina in a --

12 A. No.

13 Q. -- in a scope in order to get access?

14 A. I'm not -- I'm not totally sure. I think  
15 there was -- for some documents you had to get approval  
16 to review them be it -- and those kind of documents you  
17 didn't take out of the company or take out of the  
18 building, but I'm not sure about all the documents that  
19 were produced in the Green case.

20 Q. Okay. So over the course of time when the  
21 F-car project center files were compiled, you would not  
22 know every single person who had access to those files  
23 or may have touched them or handled them, reviewed  
24 them; true?

25 A. I would say, based on my knowledge, yes,

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1 that would be -- that would be accurate.

2 Q. Okay. The defense of a product liability  
3 lawsuit, at least in your description, is a team  
4 effort?

5 A. That's correct.

6 Q. Okay. It involves yourself and a team of  
7 inside lawyers and document discovery people and  
8 engineers as well as outside lawyers and their  
9 expertise and sometimes even third party which are  
10 hired; correct?

11 A. Engineers or lawyers, yes.

12 Q. Okay. And the common goal in defending the  
13 action is what? Because you kept using that they --  
14 we're all working towards a common goal.

15 A. Common goal was to provide a best defense  
16 for the corporation, our client. Also to make sure  
17 that all the Court's requirements and the requirements  
18 of law were met and adhered to.

19 Q. I notice absent from what you just told me  
20 was any reference to doing justice to the person who  
21 might have been injured. Is that not one of the goals  
22 of General Motors in pursuing the defense of  
23 litigation?

24 MR. VINES: Object to the form of  
25 that question.

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1 THE WITNESS: Doing justice?

2 BY MR. DONOVAN:

3 Q. Justice to the person who might --

4 A. To the person or for the --

5 Q. For the person who claims to be injured,  
6 achieving justice.

7 MR. VINES: That assumes that the  
8 goals that he's already articulated are in conflict  
9 with that goal and I don't think you've established  
10 that.

11 MR. DONOVAN: No. I didn't hear him  
12 use those words.

13 THE WITNESS: Right, and to meet the  
14 requirements of the law and to meet the requirements of  
15 procedures of the state you happen to be in, it meets  
16 that justice will be done for all parties.

17 BY MR. DONOVAN:

18 Q. Okay. But I'm talking about if General  
19 Motors is responsible either negligently or  
20 intentionally for causing injury to someone, do you  
21 believe that it's General Motors' responsibility to do  
22 justice by settling that matter or some other way  
23 dealing with that person or is it only to win cases?

24 A. No. I didn't say just to win cases.

25 Q. I'm asking you a question. I didn't say you

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1 said it. I'm saying -- I'm asking you the question.

2 A. The answer is we follow the law, follow the  
3 procedures of the court, respond to matters, treat  
4 people fairly and justice will be done. If we win, we  
5 in. If we lose, we lose.

6 Q. Do you have any specific expertise in New  
7 Jersey RICO?

8 A. No. Not New Jersey RICO.

9 Q. Have you ever read the New Jersey RICO  
10 statute?

11 A. Have I read the New Jersey RICO statute? I  
12 don't remember ever reading the New Jersey RICO  
13 statute.

14 Q. Okay. Now, you testified that --

15 A. You know, excuse me, I may have when I was  
16 at the U.S. attorney's office, New Jersey, New York,  
17 but I don't -- I may have.

18 Q. Okay. Since you were with the attorney  
19 general's office have you followed up on all the  
20 caselaw interpreting New Jersey RICO?

21 A. No.

22 Q. Okay. You would agree with me that the  
23 courts have done a lot of interpretation of RICO over  
24 the years.

25 A. Oh, absolutely. Yes.

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1 Q. And not every court has come out with the  
2 same conclusion with respect to whatever legal issue  
3 was involved.

4 A. I understand that.

5 Q. Okay. And each state's RICO was a little  
6 different than every other state's RICO.

7 A. That's why we have local counsel.

8 Q. Okay.

9 A. To work us through that maze.

10 Q. Now, you testified that GM had a competent  
11 system for the retrieval of documents back in 1989, '90  
12 timeframe; correct?

13 A. Correct.

14 Q. Okay. And if I understand from all the  
15 testimony you've given us today, that document  
16 retrieval process involves someone being directed to go  
17 do a manual search at various places which were  
18 depositories of documents; is that correct?

19 A. Well, just not someone. Someone who had an  
20 expertise in the document or the document collections  
21 that were in place. So if there was, say, for  
22 instance, a truck case, you would send a letter to the  
23 representative from the truck division to assist our  
24 engineers and our coordinator to locate the documents.

25 Q. Okay.

1 A. So it wasn't just a willy-nilly person off  
2 the street doing this work.

3 Q. It was a manual search and recover process.

4 A. I don't know about that, if it was manual or  
5 not. I think in the early '90s -- I can't -- I can't  
6 speak to that. I don't remember.

7 Q. Okay. Well, it wasn't as easy as doing,  
8 say, like a Google search for something where you would  
9 put in the words roof and collapse and T-roof and you  
10 would get a list of all the documents anywhere within  
11 the General Motors organization which might be  
12 responsive to that request, was it?

13 A. Well, in some instances it was.

14 Q. Back in '89, '90?

15 A. I believe in lawsuit searches and meeting  
16 minute documents.

17 Q. Meeting minute documents were among the  
18 computer?

19 A. Maybe not back in '89, '90.

20 I don't remember when that came in  
21 effect.

22 Yes. The answer is, yes, it wasn't  
23 as simple as typing in in Google roof crush, et cetera,  
24 documents.

25 Q. And to some degree you had to rely upon the

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1 engineering's expertise and his recollection as to  
2 where documents with respect to any particular car or  
3 any particular part might be housed?

4 A. Engineer and the person that the  
5 communication went to -- person or persons that the  
6 communication went to.

7 Q. Okay.

8 A. Albeit may have contacted the chief  
9 engineer, et cetera. Any -- as you indicated, the  
10 lowly person -- I forgot how -- the lowly person  
11 working designing the roof or whatever part of the  
12 vehicle, but, yes, it was a -- it was an all out  
13 full-blown attempt to locate responsive documents.

14 Q. If that's true, then why wasn't the first  
15 place which was searched for responsive documents the  
16 F-car Project Center file and whatever documents were  
17 in there which would have included the 64 documents  
18 produced by Rumberger Kirk later on in 1991 received as  
19 part of the initial discovery request?

20 MR. VINES: Object to the form of  
21 the question, and only answer that if you know the  
22 answer to it.

23 THE WITNESS: Well, I don't know the  
24 answer as to why someone didn't look there, but if  
25 we're talking about roof documents on the F-car, they

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1 were blown back and Rumberger Kirk had them and it was  
2 the -- the effort was now to bring in another counsel  
3 to assist us, other party, other law firm to assist us  
4 in meeting the discovery requirements, the discovery  
5 requests that were made in this case and another -- I  
6 believe another F-car case. You said Hussan or Hoisson  
7 or something of that nature. I think they were brought  
8 in to assist in locating documents for those two cases.

9 BY MR. DONOVAN:

10 Q. Was Rumberger Kirk involved in the Green  
11 case because they already had documents that they were  
12 reviewing for another case or were they brought into  
13 the case specifically to address issues in Green?

14 A. I don't know. I think it was --

15 I don't know, but I think there's  
16 communication in the file that would indicate that they  
17 had expertise with F-cars and they were already working  
18 on the Bishop case and the Hussan or Hoisson case, and  
19 so I believe they were the party -- they were the law  
20 firm of choice to assist.

21 Q. Didn't Kirkland & Ellis also have an  
22 expertise in handling roof crush rollover cases?

23 A. Yes, they did.

24 Q. Okay. And since Kirkland & Ellis were  
25 already attorneys in this file, why didn't they review

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1 attention, would you have instructed Mr. Langan to have  
2 produced all of them?

3 A. Absolutely.

4 Q. All of them.

5 A. Yes.

6 Q. Okay. That's all I have.

7 A. And the reason was -- I'm sorry.

8 Q. No. Go ahead. Give your reason.

9 A. Because I believe that if you look at the  
10 production that we made in July of '91 when it was  
11 brought to our attention that there were 60 some  
12 documents that Rumberger & Kirk had located, when it  
13 was brought to my attention, even though there was a  
14 question, and I believe one of the letters suggest that  
15 some of these weren't relevant or applied, we produced  
16 them all. We had a practice of producing more, not  
17 less.

18 RE-EXAMINATION BY MR. DONOVAN:

19 Q. Now you got me confused, Mr. Ziolkowski. I  
20 thought before the break and, you know, everybody went  
21 to the bathroom and mulled around in the hallway for a  
22 while you told me that there were certain documents in  
23 the Addendum A through H document that you would not  
24 have produced and now you're telling me --

25 A. No, no.

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1 the documents to come up with a production from it?

2 A. I believe that the Rumberger firm had  
3 already had, you know, kind of expertise in the F-car  
4 rollover litigation, roof structure litigation, so,  
5 therefore, it made more sense, I assume, to send it to  
6 them and not to Kirkland & Ellis to reinvent the wheel  
7 and to incur all those extra expenses.

8 Q. Is that an assumption you're making or is  
9 that -- do you know that based on fact?

10 A. Well, based on -- yeah, it makes --

11 Yes, that's an assumption. Well,  
12 it's assumption based on fact.

13 MR. DONOVAN: Nothing further.

14 MR. VINES: You said nothing  
15 further?

16 MR. DONOVAN: Nothing further.

17 MR. VINES: Oh. One more question.

18 RE-EXAMINATION BY MR. VINES:

19 Q. You spent some time going through the  
20 documents A through H earlier analyzing them for  
21 whether you believed them to be responsive or not. Do  
22 you recall that?

23 A. Responsive. Right.

24 Q. At the time that the Green litigation was  
25 going on, had those documents been brought to your

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1 Q. -- you would have produced all of them.

2 A. That were relevant or responsive. That  
3 doesn't mean I wouldn't have produced them.

4 I produced documents in 1991. July  
5 of 1991 that were arguably not responsive, but we  
6 produced them. These were documents that talked about  
7 trunk lids and backlights.

8 Q. I'm not asking you about those documents.

9 I'm asking you about these documents, the A through H  
10 document.

11 Did we not spend time infinitum  
12 going through these and I specifically, with respect to  
13 each of the documents after you gave your conclusions  
14 and your reasons and your analysis and you went on and  
15 on and on about that. said not produce or produce?

16 A. Well, if I did, I was mistaken.

17 Q. Okay.

18 A. Because --

19 Q. So you wish to now after the break correct  
20 your testimony --

21 A. No. Wait a minute.

22 Q. -- that all of the documents --

23 MR. VINES: Object to that.

24 THE WITNESS: I sat here during the  
25 whole break except for going to the men's room.

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1 BY MR. DONOVAN:

2 Q. Well, I'm just using a time.

3 A. Well --

4 Q. The testimony that you gave that some of the  
5 documents should not have been produced was before the  
6 break. The testimony you're giving now --

7 A. There was a question --

8 MR. VINES: Let me make an  
9 objection.

10 I believe it's very clear in the  
11 record that he has testified that he found those  
12 documents to be responsive or not responsive. What  
13 he's testifying now is, notwithstanding whether he  
14 might have considered them non-responsive, he would  
15 have instructed outside counsel to produce them anyway.

16 MR. DONOVAN: Well --

17 MR. VINES: And that's the only  
18 distinction he's making here, and I think that's clear  
19 in the record.

20 MR. DONOVAN: Mr. Vines, the record  
21 will speak for itself unlike what I'm doing with  
22 respect to whether that was true or not, so -- then I  
23 won't belabor the point any further. I have nothing  
24 further.

25 MR. VINES: Sir, I have one more

1 MR. DONOVAN: I have nothing further  
2 either. That's a wrap.

3 VIDEOGRAPHER: This concludes the  
4 deposition and we're going off the record at 5:11 and  
5 34 seconds p.m.

6 (Signature having been reserved, the  
7 deposition was concluded at 5:11 p.m.)

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1 question, a very specific one.

2 RE-EXAMINATION BY MR. VINES:

3 Q. There was a question raised earlier about  
4 why Rumberger Kirk was used to review the F-car project  
5 center documents versus Kirkland & Ellis who also was  
6 familiar with the documents engaged in litigation in  
7 which they were involved.

8 Is it possible that in addition to  
9 the fact that Rumberger Kirk was already working on  
10 that project, that they were also in their fees  
11 somewhat cheaper than Kirkland & Ellis?

12 A. That's --

13 Primarily, in my opinion, it was the  
14 fact that they had been working on these matters, F-car  
15 cases, they were familiar with the documents more so  
16 than Kirkland & Ellis, although I don't want to  
17 minimize Kirkland & Ellis's understanding and  
18 appreciation for the documents in this procedure, but  
19 it was the situation where -- you ask a good question  
20 and that is there is always reinventing the wheel and  
21 incurring costs that were already paid for, and I  
22 believe that that's one of the reasons that Kirkland --  
23 or, excuse me, that Rumberger & Kirk continued to do  
24 the review.

25 MR. VINES: I have nothing further.

1 I have reviewed the above transcript  
2 and have listed corrections, if any, on the attached  
3 errata sheet.

4 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

10 SIGNATURE OF THOMAS A. ZIOLKOWSKI

12 SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of  
13 \_\_\_\_\_, 20\_\_\_\_.

17 NOTARY PUBLIC

18 My Commission expires:

60 (Pages 234 to 235)

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1 CERTIFICATE OF NOTARY

2 STATE OF MICHIGAN )

3 ) SS

4 COUNTY OF WAYNE )

5 I, Anne H. Chilton, Certified Shorthand Reporter,  
6 a Notary Public in and for the above county and state,  
7 do hereby certify that the above deposition was taken  
8 before me at the time and place hereinbefore set forth;  
9 that the witness was by me first duly sworn to testify  
10 to the truth, and nothing but the truth, that the  
11 foregoing questions asked and answers made by the  
12 witness were duly recorded by me stenographically and  
13 reduced to computer transcription; that this is a true,  
14 full and correct transcript of my stenographic notes so  
15 taken; and that I am not related to, nor of counsel to  
16 either party, nor interested in the event of this  
17 cause.

18

19

20

21 Anne H. Chilton, CSR, RPR, RMR

22 Notary Public,

23 Wayne County, Michigan

24 My Commission expires: August 09, 2013

25

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15 INDEX TO EXHIBITS

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17 Exhibit Page

18

19 (Exhibit attached to transcript)

20

21 ZIOLKOWSKI EXHIBIT NO. 1 64

22 August 3rd, 1990 court order

23

24

25